FOOD AND DRUGS ACT

NOTICES OF JUDGMENT Nos. 5501-6000

UNITED STATES
DEPARTMENT OF AGRICULTURE

S. R. A.—Chem. Suppl. 41. Issued April 10, 1918.

United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, CHIEF OF BUREAU.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 5501–5550.

[Approved by the Acting Secretary of Agriculture, Washington, D. C., March 19, 1918.]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

5501. Adulteration of milk. U. S. * * * v. Fred W. Mueller. Plea of nolo contendere. Finding of guilty. Fine, $25 and costs. (F. & D. No. 8207. I. S. No. 10935–m.)

On May 31, 1917, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Fred W. Mueller, County Line, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about August 10, 1916, from the State of Illinois into the State of Missouri, of a quantity of milk which was adulterated.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Subdivision.	Butter fat.	Total solids by drying.	Refractive index.
	Per cent.	*Per cent.*	
1	3.5	11.22	39.0
2	3.5	11.27	39.0

The above analysis shows that water has been added to the product.

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for milk, which the article purported to be.

On June 4, 1917, the defendant entered a plea of nolo contendere to the information, but the court found him guilty and imposed a fine of $25 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5502. Adulteration and misbranding of Garrod Spa lithia water. U. S. * * * v. Enno Sander Seltzer & Soda Co., a corporation. Plea of guilty. Fine, $30 and costs. (F. & D. No. 8214. I. S. No. 21115-m.)

On May 5, 1917, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Enno Sander Seltzer & Soda Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about August 12, 1916, from the State of Missouri into the State of California, of a quantity of an article labeled in part, "Garrod Spa Lithia Water," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Ions	Mg per liter.
Silica (SiO_2)	8.0
Sulphuric acid (SO_4)	90.6
Bicarbonic acid (HCO_3)	2,454.6
Chlorin (Cl)	896.5
Calcium (Ca)	16.0
Magnesium (Mg)	5.2
Potassium (K)	256.0
Sodium (Na)	966.0
Lithium (Li)	124.0
	4,816 9

Hypothetical combinations.

	Mg per liter.
Silica (SiO_2)	8.0
Potassium chlorid (KCl)	488.2
Sodium chlorid (NaCl)	50.7
Sodium sulphate (Na_2SO_4)	134.0
Sodium bicarbonate ($NaHCO_3$)	3,281.4
Magnesium bicarbonate ($Mg(HCO_3)_2$)	31.3
Calcium bicarbonate ($Ca(HCO_3)_2$)	64.7
Silica (SiO_2)	8.0
	4,816.9

	Mg per liter.				
	Bottle 1.	Bottle 2.	Bottle 3.	Bottle 4.	Bottle 5.
Ammonia, free (as nitrogen)	0.020	0.012	.....	.....	.....
Ammonia, albuminoid (as nitrogen)	0.166	0.234	.....	.....	.....
Nitrogen as nitrates	0.41	0.21	.....	.....	.....
Nitrogen as nitrites	0.006	0.2	0.005	0.005	0.003

Organisms per cc. on agar after one day at 37° C., from 400 to 220,000. Bacillus coli confirmed in 0.001 cc.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal substance; and for the further reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

Misbranding was alleged in substance for the reason that certain statements appearing on the labels of the article falsely and fraudulently represented it as a cure for gout and rheumatism, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that, although the article was in package form, the quantity of the contents in said package was not plainly and conspicuously marked on the outside thereof in terms of weight, measure, or numerical count.

On May 16, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $30 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5503. Adulteration and misbranding of clams. U. S. * * * v. 48 Cases of Clams. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 8221. I. S. No. 22214-m. S. No. W-176.)

On March 30, 1917, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 48 cases of clams, consigned by Pettigrew & Zinn, San Francisco, Cal., remaining unsold in the original unbroken packages at Seattle, Wash., alleging that the article had been shipped on or about March 29, 1917, and transported from the State of California into the State of Washington, and charging adulteration in violation of the Food and Drugs Act. The article was labeled, "Puget Sound Brand Whole Clams packed by H. Van Vlack and Co., Olympia, Wash."

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in whole or in part of a decomposed animal substance and was unfit for consumption or use.

Misbranding was alleged in substance for the reason that the statements on [the] label of the article gave the impression and were designed to give the impression that the article consisted of pure animal substance, whereas it did not, and said statements were false, misleading, and untrue.

On April 23, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5504. Adulteration and alleged misbranding of olive oil. U. S. * * * v. 1 Case * * * of Canned Olive Oil. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 8222. I. S. No. 2144–m. S. No. E–837.)

On March 30, 1917, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case of canned olive oil, remaining unsold in the original unbroken packages at Johnstown, Pa., alleging that the article had been shipped by the Italian Importing Co., Elizabeth, N. J., and transported from the State of New Jersey into the State of Pennsylvania, the shipment having been received at Johnstown on or about February 20, 1917, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted largely of cottonseed oil, which had been mixed and packed with and substituted for olive oil.

Misbranding was alleged in substance for the reason that the article was offered for sale under the distinctive name of olive oil, when, in fact, it was not olive oil, but consisted in whole or in part of cottonseed oil, which had been mixed and packed with and substituted for olive oil; for the further reason that it was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, olive oil; and for the further reason that the article was in package form, and showed a shortage of about 8 per cent from the declared quantity of contents.

On April 17, 1917, Rocco Angelo, Johnstown, Pa., claimant, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered, the court finding the product adulterated, and it was ordered that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $100, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5505. Adulteration and misbranding of vinegar. U. S. * * * v. 4 Tanks, Each Containing Vinegar * * *. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 8224. I. S. No. 10769–m. S. No. C–687.)

On April 4, 1917, the United States attorney for the Western District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 4 tanks, containing 8,500 gallons of vinegar, remaining unsold in the original unbroken packages at Oklahoma City, Okla., alleging that the article had been shipped, in violation of the Food and Drugs Act, on or about March 19, 1917, by Gist-Leo Vinegar Co., Springfield, Mo., and transported from the State of Missouri into the State of Oklahoma, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was invoiced as "Cider Vinegar of 52 grain strength."

It was alleged in the libel that the said article of food in said tanks contained was not labeled and branded so as to show the name, kind, quality, grade, or analysis of the contents thereof, but that the same was sold, contracted for, and invoiced as "Eighty Five Hundred Gallons Cider Vinegar, fifty-two grain strength," when, in truth and in fact, the contents of said tanks did not consist of cider vinegar, 52-grain strength, but were misbranded and adulterated, and contained a product consisting in part of distilled vinegar and in part of dilute acetic acid, and that distilled vinegar and dilute acetic acid had been mixed and packed with the contents thereof so as to reduce and lower and injuriously affect its quality and strength, and in that said adulterating substance had been substituted in part for cider vinegar.

On May 14, 1917, the said Gist-Leo Vinegar Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,200, in conformity with section 10 of the act.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5506. Adulteration and misbranding of baked beans. U. S. * * * v. 23 Cases of Beans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 8225. I. S. No. 21671–m. S. No. W–179.)

On April 6, 1917, the United States attorney for the District of Arizona, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 23 cases of baked beans, remaining unsold in the original unbroken packages at Winslow, Ariz., alleging that the article had been shipped on or about December 29, 1916, by the Ridenour Baker Co., Kansas City, Mo., and transported from the State of Missouri into the State of Arizona, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled, "Gilt Edge Brand Baked Beans. Packed by Union Packing Co., Omaha, Nebr."

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

Misbranding was alleged in substance for the reason that said article was labeled and branded so as to deceive and mislead the purchasers in that said article was labeled, "Baked Beans," which statement was false and misleading, and deceived and misled the purchaser, in that said beans had not been baked, but had been cooked by another and different process than by baking.

On May 31, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5507. Adulteration of walnuts. U. S. * * * v. 140 Sacks * * * of Walnuts. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 8227. I. S. No. 1568-m. S. No. E-840.)

On April 10, 1917, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 140 sacks of walnuts, consigned by Emil Zucca, New York, N. Y., remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped on or about March 22, 1917, and transported from the State of New York into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a decomposed vegetable substance.

On May 1, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5508. Adulteration of walnut meats. U. S. * * * v. 15 Cases of Walnut Meats. Default decree of condemnation forfeiture, and destruction. (F. & D. No. 8228. I. S. No. 22317–m. S. No. W–182.)

On April 13, 1917, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 15 cases of walnut meats, consigned by Birdsong Bros., New York, N. Y., remaining unsold in the original unbroken packages at Denver, Colo., alleging that the article had been shipped and transported from the State of New York into the State of Colorado, the shipment having arrived at Denver March 4, 1917, and, charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a moldy and decomposed vegetable substance.

On May 17, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and on May 29, 1917, it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5509. Adulteration of oranges. U. S. * * * v. 196 Boxes of Oranges. Consent decree of condemnation and forfeiture. Good portion released. Unfit portion ordered destroyed. (F. & D. No. 8230. I. S. No. 22316–m. S. No. W–180.)

On or about April 7, 1917, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 196 boxes of oranges labeled, "White Cap Brand Sutherland Fruit Co. California," consigned by the Sutherland Fruit Co., Riverside, Cal., remaining unsold in the original unbroken packages at Denver, Colo., alleging that the article had been shipped and transported from the State of California into the State of Colorado, arriving at Denver, Colo., on April 2, 1917, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that said oranges were decomposed, that is to say, had been frosted, and as a result of such frosting their tissues showed disintegration, they were bitter, had commenced to rot and decay, were light in weight, and contained little juice.

On May 3, 1917, Anthony E. Heichemer, Denver, Colo., claimant, having previously consented to a decree and having given a good and sufficient bond, in conformity with section 10 of the act, and the good portion of product, ascertained after careful examination, having been released to said claimant, judgment of condemnation and forfeiture was entered as to the remainder of the product, and it was ordered by the court that such unfit portion should be destroyed by the United States marshal, and that the claimant should pay the costs of the proceeding.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5510. Misbranding of eggs. U. S. * * * v. Golden & Co., a corporation. Plea of nolo contendere. Fine, $150. (F. & D. No. 8249. I. S. No. 3801–m.)

On June 11, 1917, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Golden & Co., a corporation, Washington, D. C., alleging the sale by said company, in violation of the Food and Drugs Act, on December 20, 1916, at the District aforesaid, of a quantity of an article labeled in part, "Fresh * * * eggs * * *," which was misbranded.

Examination of a sample of the article by the Bureau of Chemistry of this department showed enlarged air chambers in all the eggs, crystals indicating cold-storage product present. One heavy spot and two eggs with yolks sticking to shell found.

Misbranding of the article was alleged in the information for the reason that the statement concerning said article and the ingredients and substances contained therein, appearing on its label, to wit, "Fresh," was false and misleading in that it represented to purchasers that said article consisted of fresh eggs; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it consisted of fresh eggs, whereas, in fact and in truth, it consisted of eggs which were not fresh. On June 11, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $150.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5511. Adulteration of oats. U. S. * * * v. 63,150 Pounds (1,973.14 Bushels) of Oats. Product ordered released on bond. (F. & D. No. 308–c. I. S. No. 9429–l.)

On May 15, 1916, the United States attorney for the Western District of Virginia, acting upon a report by the Dairy and Food Commissioner of Virginia, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 63,150 pounds (1,973.14 bushels) of oats, alleging that the article had been shipped on April 17, 1916, by Adolph Kempner & Co., Chicago, Ill., and transported from the State of Illinois into the State of Virginia, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in substance in the libel that the article was adulterated in that oats, burned and charred, and which had lost all nutritive properties, had been mixed and packed with the article so as to reduce and lower and injuriously affect its quality.

On July 10, 1916, Adolph Kempner & Co., claimant, having paid the costs of the proceedings and executed a bond, in conformity with section 10 of the act, it was ordered by the court that the product should be delivered to said claimant.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5512. Adulteration and misbranding of cottonseed meal. U. S. * * * v. 300 Sacks of Cottonseed Meal. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 328–c. I. S. No. 20810–m.)

On February 18, 1917, the United States attorney for the Middle District of Tennessee, acting upon a report by the Commissioner of Agriculture of the State of Tennessee, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 300 sacks of cottonseed meal, remaining unsold in the original unbroken packages at Nashville, Tenn., alleging that the article had been shipped on or about January 19, 1917, by the Sulligent Cotton Oil Co., Sulligent, Ala., and transported from the State of Alabama into the State of Tennessee, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "* * * Medium Grade Cotton Seed Meal * * *."

Adulteration of the article was alleged in substance in the libel for the reason that cottonseed hulls had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for cottonseed meal, which the article purported to be; and for the further reason that it had been mixed with cottonseed hulls in a manner whereby damage and inferiority were concealed.

It was alleged in substance that the article was misbranded for the reason that it was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, cottonseed meal, and was labeled so as to deceive and mislead the purchaser into the belief that it was cottonseed meal, when, in truth and in fact, it was not, but was cottonseed meal mixed with cottonseed hulls; and for the further reason that its packages bore a statement regarding the ingredients and substances contained in the article, to wit, "Ammonia 7.50%," which was false and misleading in that said statement showed the product to contain 7.50 per cent ammonia, when, in truth and in fact, it did not, but contained approximately 6.90 per cent ammonia.

On May 10, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be labeled so as to show its true contents and be sold at public auction by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5513. Adulteration of milk. U. S. * * * v. Mary E. Harris. Plea of guilty. Defendant allowed to go on her personal bonds. (F. & D. No. 331–c.)

On May 4, 1917, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Mary E. Harris, Rockville, Md., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on April 9, 1917, from the State of Maryland into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the article was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality.

On May 4, 1917, the defendant entered a plea of guilty to the information, and the court thereupon took her personal bonds.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5514. Adulteration of milk. U. S. * * * v. Robert S. Oliver. Plea of guilty. Fine, $25. (F. & D. No. 332–c.)

On February 13, 1917, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Robert S. Oliver, Barcroft, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on February 8, 1917, from the State of Virginia into the District of Columbia, of a quantity of milk which was adulterated.

Adulteraton of the article was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality.

On February 13, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5515. Adulteration of milk. U. S. * * * v. Beriah W. Head. Plea of guilty. Fine, $25. (F. & D. No. 333–c.)

On March 8, 1917, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Beriah W. Head, Vienna, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on February 8, 1917, from the State of Virginia into the District of Columbia, of a quantity of milk which was adulterated.

Adulteration of the article was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, unsweetened condensed milk, which reduced and lowered its quality.

On March 8, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5516. Adulteration of milk. U. S. * * * v. Harry L. Oliver. Plea of guilty. Fine, $15. (F. & D. No. 334-c.)

On May 8, 1917, the United States attorney for the District of Columbia, acting upon a report by the health officer of said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Harry L. Oliver, Great Falls, Va., alleging the shipment by said defendant, in violation of the Food and Drugs Act, on April 16, 1917, and April 24, 1917, from the State of Virginia into the District of Columbia, of quantities of milk which was adulterated.

Adulteration of the article in each shipment was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality.

On May 8, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $15.

CARL VROOMAN, *Acting Secretary of Agriculture.*

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5517. Adulteration of milk. U. S. * * * v. Horace E. Smith. Plea of guilty. Fine, $25. (F. & D. No. 336–c.)

On June 1, 1917, the United States attorney for the District of Columbia, acting upon a report by the health officer of the said District, authorized by the Secretary of Agriculture, filed in the police court of the District aforesaid an information against Horace E. Smith, Doubs, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on April 4, 1917, and April 12, 1917, from the State of Maryland into the District of Columbia, of quantities of milk which was adulterated.

Adulteration of the article in each shipment was alleged in the information for the reason that it had been mixed and packed with a substance, to wit, water, which reduced and lowered its quality.

On June 1, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5518. Adulteration and misbranding of malt sprouts. U. S. * * * v. 483 Bags of Malt Sprouts. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 337–c. I. S. No. 11984–m.)

On February 28, 1917, the United States attorney for the Middle District of Tennessee, acting upon a report by the Commissioner of Agriculture of the State of Tennessee, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 483 bags of malt sprouts, remaining unsold in the original unbroken packages at Nashville, Tenn., alleging that the article had been shipped on or about February 16, 1917, by C. U. Snyder & Co., Chicago, Ill., and transported from the State of Illinois into the State of Tennessee, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was invoiced as "Malt Sprouts."

Adulteration of the article was alleged in substance in the libel for the reason that barley chaff (or hulls), screenings, and dust had been mixed and packed therewith so as to reduce or lower its quality and strength, and had been substituted in part for the article.

Misbranding was alleged for the reason that the article was an imitation of and offered for sale under the distinctive name of another article, to wit, malt sprouts, whereas, in truth and in fact, it was a mixture of barley, chaff (or hulls), screenings, dust, and a small amount of malt sprouts.

On May 31, 1917, the said C. U. Snyder & Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the article should be properly labeled under the supervision of this department.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5519. Adulteration and misbranding of oil of wintergreen. U. S. * * * v. Valentine B. Bowers. Plea of nolo contendere. Fine, $200 and costs. (F. & D. No. 5113. I. S. No. 2659-h.)

On June 8, 1916, the United States attorney for the Western District of North Carolina, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Valentine B. Bowers, Spruce Pine, N. C., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about February 5, 1914, from the State of North Carolina into the State of Michigan, of a quantity of oil of wintergreen which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Rotation in 100-mm tube at 20°C (degrees circular)_____ 0.0

Odor is not characteristic of oil of wintergreen and article contains little if any natural oil of wintergreen.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, methyl salicylate, derived from a source other than wintergreen, had been substituted in whole or in part for oil of wintergreen, which the article purported to be.

Misbranding was alleged for the reason that the article was an imitation oil of wintergreen prepared in whole or in part from methyl salicylate, derived from a source other than wintergreen, and was offered for sale under the distinctive name of another article, to wit, "Oil of Wintergreen."

On April 18, 1917, the defendant entered a plea of nolo contendere to the information, and the court imposed a fine of $200 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5520. Adulteration and misbranding of oil lemon. U. S. * * * v. M. Getz & Co., a corporation. Plea of guilty. Fine, $100. (F. & D. No. 5777. I. S. Nos. 8184-h, 17239-k.)

On May 31, 1916, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against M. Getz & Co., a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on or about May 8, 1914, and September 23, 1914, from the State of California into the State of Washington, of quantities of an article invoiced as "Oil Lemon," which was adulterated and misbranded.

Analysis of samples of the article by the Bureau of Chemistry of this department showed respectively the following results:

	No. 1.	No. 2.
Specific gravity at 15.6° C	0.8524	0.8554
Angular rotation at 20° C (degrees)	+62.25	+62.38
Refractive index at 20° C	1.4744	1.4751
Citral (per cent)	2.58	3.22
Alcohol (per cent by volume)	0.20	0.14
Examination of first 10 per cent distillate, after washing the sample with saturated salt solution, showed—		
Angular rotation at 20° C (degrees)	59.06	59.61
Refractive index at 20° C	1.4726	1.4729

The above results show each sample to be washed lemon oil.

Adulteration of the article in each shipment was alleged in the information for the reason that a substance, to wit, washed lemon oil, had been substituted in whole or in part for oil lemon, which the article purported to be; and for the further reason that a valuable constituent of the article, to wit, citral, had been wholly or in part abstracted.

Misbranding was alleged for the reason that the article was a product consisting of washed lemon oil, and was offered for sale under the distinctive name of another article, to wit, oil lemon.

On May 3, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5521. Adulteration and misbranding of macaroni. U. S. * * * v. Atlantic Macaroni Co., a corporation. Plea of guilty as to the misbranding charges. Verdict of guilty rendered on the charges of adulteration. Fine, $398. (F. & D. No. 5961. I. S. Nos. 991-h, 137-h.)

On October 21, 1915, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Atlantic Macaroni Co., a corporation, Long Island City, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on or about August 1, 1913, and October 10, 1913, from the State of New York into the States of New Jersey and Ohio, respectively, of quantities of an article labeled in part, "Macaroni Savoia Brand Gragnano Style," which was adulterated and misbranded.

Analyses of samples of the article in each shipment by the Bureau of Chemistry of this department showed the following results:

Shipment of August 1.

Moisture (per cent)	9.72
Ash (per cent)	0.43
Nitrogen (per cent)	1.99
Protein (N x 5.7) (per cent)	11.34

Residue from ammoniacal alcohol extract shows the presence of some semolina.

Sample is not made from durum wheat flour or semolina. It is artificially colored to simulate macaroni made from durum wheat flour or semolina, which is the product from which the best grades of macaroni are made.

Shipment of October 10.

Moisture (per cent)	12.29
Ash (per cent)	0.34
Nitrogen (per cent)	1.88
Protein (N x 5.7) (per cent)	10.72

Residue from ammoniacal alcohol extract: Normal.

Semolina: None.

Cooking test: Normal.

Sample is made from a mixture of soft wheat flour and hard wheat flour, and not from durum semolina. It is artificially colored to simulate macaroni made from durum wheat flour or semolina, which is the product from which the best grades of macaroni are made.

Adulteration of the article was alleged in the information for the reason that it was an inferior macaroni prepared in whole or in part from a flour other than semolina prepared from durum wheat, the material from which the best grade of macaroni is made, and the same was colored with a certain dye, to wit, naphthol yellow S., to simulate the natural appearance of macaroni made wholly from semolina prepared from durum wheat, and in a manner whereby the inferiority of said article was concealed.

Misbranding was alleged in substance for the reason that the statement, to wit, "Macaroni Savoia Brand Gragnano Style," the word, "Style," appearing in such inconspicuous type and so placed on said label as to be undecipherable unless closely scrutinized, together with certain pictorial designs and devices suggesting the Italian coat of arms and Italian scenes, and the shape and style of the package, all and singular, were false and misleading in that they purported and represented that said article was a foreign product; and for the

further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was a foreign product, to wit, a macaroni manufactured in the Kingdom of Italy, whereas, in truth and in fact, it was not so, but was a domestic product, to wit, a macaroni manufactured in the United States of America.

On January 26, 1916, the defendant company entered a plea of guilty to the charges of misbranding, allowing its plea of not guilty to the charges of adulteration, theretofore entered, to stand. On January 15, 1917, the case came on for trial before the court and a jury upon the charges of adulteration, and, after the submission of evidence and arguments by counsel, on January 22, 1917, the following charge was delivered to the jury by the court (Chatfield, *J.*):

Gentlemen of the jury, we have a considerable amount of testimony in this case. Part of the subject matter is very interesting from the standpoint of the average juryman because of what we are talking about. Part of it is interesting from a scientific standpoint because of the way in which the tests were made, and because of the exhibits that are produced. Part of it is interesting from the legal question that is presented under this statute.

But everything that has been allowed to go into the case as evidence for you to consider has to do with some part of the issue that is presented for you to consider. And so you can not divide the case into that which sounds important, or that which sounds interesting, or that which seems to you perhaps has nothing to do with the question as it was originally presented. You must weigh all the testimony from the standpoint of the question that is finally shown and which I have allowed to go to you as a question of fact upon everything that has been said. It is a criminal charge and, therefore, you have to look at the matter from the standpoint of a criminal case. Now, that means that certain rules must be observed by you in weighing the testimony, and also in considering the issue of the case.

The Government is not concerned with this case in the sense of a person who is bringing an action merely to recover damages, and even though you can see that the Government and its officials and the witnesses have some interest in whether or not the routine of the Department and the work of the Department is upheld and carried out, nevertheless this case comes here (with the United States bringing the parties into Court) because of a statute of Congress under which the United States simply makes the parties appear in the court room; then it presents evidence against them, and then it is the jury's duty to see whether the United States presents sufficient evidence to prove a case beyond a reasonable doubt, or else the verdict would be in favor of the defendants, and the defendants would be free of the charge. So, in that way, you have to hear all the testimony and scrutinize everything that has been said and everything that has been allowed to go into the case in just testing the question of whether the Government proves its case beyond reasonable doubt—by that I mean a doubt that you 12 men in discussing this case would consider what you would call a reasonable doubt with reference to a matter of this sort—whether the Government proves beyond such a reasonable doubt in your minds that the defendant has done that which is specifically charged in the form in which I shall outline the question to you.

Now, that makes it necessary for you to immediately bear in mind another thing. The defendant could have sat there—of course, it is a corporation, and when I refer to the defendant you will have to understand that it is illustrated by Mr. Calandara, although Mr. Calandara might not have been here. No officer, nor any particular person, need have appeared at all. If Mr. Brown, as counsel, had presented the defendant's case, without anyone from the defendant sitting beside him, you would have to assume that the defendant was there, and that Mr. Brown was talking for a person, which in that sense constituted a corporation which had to work through persons, whose acts therefore you could consider just as if the person were here, but remembering the difference between the individual and a corporation—so I say the defendant could have remained in the court room and at the end of the Government's case could have simply said "I have nothing further to present for the jury to consider," and the jury would have considered whether or not the Government had made out its case upon what it had heard. But the defendant here has gone further than that and has put in some testimony which you also have heard, and so you must now consider all that has gone before you. If there is contradiction

consider the testimony, weighing one thing against the other. Where the testimony agrees, that is, if you believe the statement as the witness made it, and where there is no contradiction assume that that proves the facts, unless something in the testimony makes you throw out entirely that particular piece of evidence. Thus consider the whole matter to see if the Government has shown beyond reasonable doubt that the defendant did do as charged in the indictment, and in the form in which I shall leave it to you.

Now, from that you can see, by another step in reasoning, that it is not the number of witnesses, nor the amount that they may say, nor the particular kind of thing that they are talking about that will furnish belief in your minds as you consider it. It is the worth of what is said, and it makes no difference who says it, or how it comes out. If the Government officials, the Government witnesses, through their work in the Department, and their connection in the case have some feeling, either of pride in what they are doing, or of interest in their work, or of feeling that they are right because of the way they do their work, then take that into account in weighing what they said, so as to see whether you find the facts according to what they say. In the case of the defendant, consider the relations of those who are connected with the business and what they say, from the standpoint of their employment, and from what they were doing at the time these acts were charged, just what point of view they testify from when they tell you about these matters. So, you see it is not merely what they may now believe or think which you should have in your mind, but determine for yourselves just what are the facts and what were the facts and just what weight and application those facts should have, in considering the issue from the standpoint of everybody connected with the matter.

Now, one or two things more I want to refer to in that general way. As I have indicated, some matters are not contradicted and are presumed to be correct, unless there is some reason in your minds to disregard the entire testimony. We have one or two matters in this case as to which there seems to be no question but they ought to be inquired into carefully, and you can see that if you once get through with a question and it is not material to the case, then you must remember the testimony, but you can disregard the steps by which we got there. For instance, these questions as to identity of the particular exhibits. Miss Doyle produced a vial here and told us that it was macaroni from box No. 1, while it apparently was of considerably larger size, so if it came from box No. 1 the yeast must have made it grow, or something else, and when we come to inquire about that, the evident situation was that the analysis, the figures that were given, applied to the other one of the two boxes, if they were kept straight prior to the time that Miss Doyle had a chance to analyze them. It is evident she has produced a sample of the other one of the two things that were analyzed at the same time, and she has given you information as to the article which she analyzed. If it is the same one as that which she produces, then she has given you testimony as to the object which she produced and you have testimony that it was one of the two boxes coming from Cincinnati, under the circumstances that were described. If she has given you testimony as to the analysis of the other sample which she had and if she has actually brought here the wrong sample and given you the right analysis then you have the figures as to this other exhibit, but she has given you the wrong or second object to look at. Now, you can see that after hearing all about that, if you are satisfied that the boxes were properly found, that is, I mean that the identical box was found that they are talking about; it was marked, sealed, transmitted and analyzed, and if you have the figures that you need know about, why then we can just dismiss the question of how these exhibits were marked, or how Miss Doyle happened to refer to that one, but you can take that into account in questioning the accuracy of either the marking or keeping track of the exhibits or analysis. In other words, take everything you heard in weighing the testimony of witnesses, so you can find the facts. If you do not find facts or do not have facts, from which to consider the questions of the case, then, of course, you will be unable to arrive at a conclusion.

Now, ordinarily an individual when he submits himself to the jury to testify allows the jury to consider whether or not he is telling the truth. Consider his judgment, the way in which he testifies, the way he appears, what he says. Weigh these in connection with the other matters. A corporation has to testify, just as it has to do its work, through men that it employs, or that have the authority, the actual representatives for the corporation in whatever they are attempting to do. Now, I have already told you that you should weigh the testimony of these individuals, in so far as they represent the corporation and

have done the acts that are being considered as acts of the corporation. Then you need go no further (in so far as they are acts of the persons concerned, in so far as they are acts of the corporation) outside of those individuals who have testified. You will have to assume that a corporation acts through persons, and that whether or not the corporation was intending to do something one way or another way depends upon the intent and purpose of those who at the time were doing the acts for the corporation. So, whether or not there is knowledge or plan, whether a corporation has an idea of doing something in accordance with the law, or contrary, may have to depend upon the circumstances under which the persons acted who were acting for the corporation at the time when the acts were committed. So in such a case as this you have to bear that in mind; bear in mind that a corporation is not like an individual, it does not have a reputation in the ordinary sense for truth telling, because it does not talk. You can weigh the *individuals'* testimony according to what you know about *them.* They are presumed to tell the truth, unless you disbelieve them; so a corporation is presumed to abide by the law, and you know nothing against it unless you find it from the testimony here.

So, you have to find whether the Government proves beyond a reasonable doubt that which the Government charges, and you should not reach that conclusion until you have gone up into the jury room; until you 12 men have talked about the evidence with each other so as to see what is the finding of fact upon each of the material points, by you 12 men talking with each other. You have 12 separate minds, but those must all work in 12 parts so as to make one result, and no mind, of course, should assume that it's one-twelfth is the whole, or that it's one-twelfth can work without the help and the working at the same time of the other 11. So that, after you go to your jury room, determine just what you think did happen; what facts are proven in your mind beyond reasonable doubt; then consider what is the effect of these facts and whether or not the Government proves its case beyond reasonable doubt upon the whole matter.

Now, I have spoken of that longer than would ordinarily be necessary because of this question of a charge against a corporation, because of the length of time that has elapsed since the acts charged; because, also, you have heard some testimony that where a matter of this sort is brought to the attention of the Government and of a person or corporation, where there is any possible variation from the methods that were laid down by Congress, it frequently happens (as happened with relation to some of the matters that you have heard here) that the corporation or person then brings itself or himself entirely in line with the statute and so that the matter which is under consideration is not repeated. If the public have been injured at any time in the past in the way in which the statute has been intended to prevent, and if, in order to avoid repeated charges under the statute, the person whose acts are called in question (as to which there may be a hearing, as you heard, over in the appraisers' stores) after that person gets an understanding of what the Government requires it may then make its labels and its product comply with what the Government will require and then there will be no future question, but if at the time the act charged there was a noncompliance with the statute, the case may still come before a jury and the jury will have to consider whether that particular act and that particular situation was, at that time, a violation of the statute, without reference to whether or not it was trivial; whether it only lasted a short time; whether the effect of it was greater or less through outside circumstances and without reference to whether punishment should be severe or slight.

Now, I am going to come right back to that in just a moment when I speak of the question of misbranding, but before that I want to speak of this pure food and drug law. You understand that Congress, under the Constitution, has certain authority. It may pass a law prohibiting certain things and regulating certain matters, if the Constitution gives Congress the authority. Everything else of what we know as police matters, or health matters, belongs to the laws of the State where you live. So, in New York, if a Commissioner of Health, of the Department of Health, here in New York, wants to clean up some particular section in Brooklyn, he does that under the authority that the State of New York, through its Legislature, gives to him. But if the Department of Health in New York City finds that some one is coming from Texas into New York, and that after he comes to New York disease arises here, they can not stop that person or regulate the coming of a person until the person comes into the State of New York. So Congress has authority under the Constitution

to regulate matters that go from one State into the other in the sense of commerce. They have the power to regulate the passage of articles, that is, goods; they have the power to regulate the running of railroad trains; they have the power to regulate the traveling of persons who use those trains and thereby themselves constitute commercial intercourse between the States, and in the same way if cases arise in which your interest conflicts with the interest of a person in another State, that case can be heard in the United States court, and Congress has the power to make a law about it. Now, that is where this statute started. Congress had power to pass the law prohibiting the transfer or sale, that is the commerce, from one State to the other of food or drugs that did not comply with certain established standards as created by this statute which, as you have heard, was passed and went into effect in June 1906, and which has been amended in some respects since.

Now, it covers two things—foods and drugs. I am not going to refer to the question of drugs. There are a number of provisions specifying just when drugs shall be misbranded, or adulterated, or put out in such a way that they deceive the public. There are a number of provisions relating to foods, and by section 1 of the statute it is made an offense to manufacture an article of food or drug which is adulterated or misbranded within the territories, or in the District of Columbia, where the United States law is exclusive of the State law. Then, in section 2 it provides that the introduction into any State or Territory, or the District of Columbia, from any other State or Territory, or from a foreign country, of any article of food or drugs, which is adulterated or misbranded within the meaning of the act is prohibited. That means that the article is made contraband, and its transmission can be stopped, if Congress provides the machinery for doing that, and the treatment of that article will then go on according to acts of Congress, as, for instance, in this case, you have heard that a certain lot of boxes were seized under the provisions of this act and treated as contraband goods. Now, whether or not Mr. Koch or the defendant here could take up with the Government the question of the manner of that seizure, get some of the goods back, get the value of the goods, whether the goods were properly condemned or not has nothing to do with you in this case. All we know is that, under that section of the law, at a certain time, these inspectors went to Mr. Koch's store and actually took into their custody certain articles of goods and from that time on they were treated as in the custody of the Government on the claim of the Government that it was contraband. The controversy between the defendant and Mr. Koch as to how they should pay for the goods we have nothing to do with, because that has straightened itself all out. You have merely learned what became of the goods.

Now, the next provision is: Any person who shall ship or deliver for shipment from any State to another State any article so adulterated or misbranded, within the meaning of this act, commits an offense, and it says that an article, for the purposes of this act, shall be deemed to be adulterated in the case of food, first, if any substance has been mixed and packed with it so as to reduce or lower or injuriously affect its quality or strength; second, if any substance has been substituted wholly or in part for the article; third, if any valuable constituent of the article has been wholly or in part abstracted; fourth, if it be mixed, colored, powdered, coated, or stained in a manner whereby damage or inferiority is concealed; fifth, if it contain any added poisonous or other added deleterious ingredient which may render such article injurious to health; sixth, if it contains putrid animal matter, decomposed animal matter, with which we have nothing to do.

If this macaroni was made in certain localities or countries it might come within the sixth section, but apparently not when made in Brooklyn. The indictment makes no claim in this case that this defendant's factory is not well conducted and is not clean—that the product is not clean. No charge is made that the product is a filthy or decomposed substance, or anything that makes it filthy, injurious to health, in the sense of poison. Then there is a provision that the term misbranded shall apply to all articles of food the packages or labels of which shall bear any statement, design, or device regarding such article or ingredients or substances contained therein which shall be false or misleading in any particular. It says, for the purpose of the act, an article shall be deemed misbranded in the case of food if it be an imitation of or offered for sale under the distinctive name of another article. If it be labeled or branded so as to deceive or mislead the purchaser; or if the contents have been removed and others put in their place; or if it contain certain drugs; if the weight and the contents of the package are not plainly stated; or if the package containing

it or its label shall bear any statement, design or device regarding the ingredients or substances contained therein, which statement, design or device shall be false or misleading in any particular, provided that an article of food which does not contain any added poisonous or deleterious ingredients shall not be deemed adulterated or misbranded in certain cases, that is, where they are labeled as compounded or blended.

Now, I have had to read that for this reason, that when this information was filed, and the Government brought this charge, they included four counts. Two related to each of the shipments of which the Government claims exhibit 1 in the Cincinnati case, and exhibit 5 in the Newark case were a part. Count 1 charges that by means of a delivery wagon, on or about the 1st day of August, 1913, in violation of this statute, the defendant shipped, by means of this delivery wagon, from Long Island City to H. Koch Co., 180 boxes each containing 22 pounds of something that was designed for an article of food, and that they were labeled and marked, as you have seen, "Macaroni Savoia Brand, Gragnano Style. Guaranteed under the Food and Drugs Act," with a picture of the Bay of Naples, and so on. That said article of food when shipped and delivered for shipment as aforesaid was then and there adulterated within the meaning of said act of Congress in that it was an inferior macaroni prepared, in whole or in part, from a flour other than semolina prepared from durum wheat, the material from which the best grade of macaroni is made, and the same was colored with a certain dye, to wit, naphthol yellow S., to simulate the natural appearance of macaroni made wholly from semolina prepared from durum wheat, and in a manner whereby the inferiority of said article was concealed. Now, the third count which you have before you charges exactly that same offense with relation to the other exhibit, which it is said was shipped by rail to Cincinnati, and as to which you have heard testimony, and the charge is that that was shipped on or about the 10th day of October, 1913, in violation of the same law. Now count 2 provided, or charged, that the shipment of the boxes sent to Koch in Newark were misbranded in that the labels did not show the purchaser that these goods were artificially colored and did not show the purchaser that there was anything in that except semolina. Count 4 charged, in the same words, in the same fashion, that the shipment to Cincinnati was misbranded in that the boxes did not show that it was artificially colored and that it was not made from a semolina of durum wheat. When that was brought to the defendant's attention, this question as to whether or not the goods had been shipped with or without the rubber stamp, the defendant immediately admitted, so far as the record is concerned, that these boxes, which apparently they had sent out, did not bear the rubber stamp, and that therefore they were not branded as the defendant stated it had intended to have them branded when they were shipped. They, therefore, said that they were responsible under this statute for having shipped to Cincinnati and Newark goods that were not stamped as they themselves stamped them so as to comply with the law, and a plea of guilty as to the responsibility for sending out those shipments, without the rubber stamp on the label, was entered.

Now, you can see that under this statute the same article may be charged to be adulterated in that it does not show of what it is constituted, and that the lack of material, or change of material, is covered up, and the same article may be misbranded in that as it was sold to the public its true contents were not disclosed. The purpose of both of these acts may be to defraud the public, or to harm the public, either in the sense of making them pay more, or of getting a poorer article, or of not getting what they think they are buying, but there is a difference when you come to consider the acts themselves, and you must carefully distinguish whether you should charge that the product is merely misbranded or whether it is adulterated. Now, let me illustrate. Suppose an article is sent out and sold for the purpose of killing potato bugs and is labeled Paris green. If, instead of containing Paris green, it merely has some green coloring matter and is made out of earth, and whether potato bugs would like it, or it would do them no harm, then if that is sold for Paris green, of course, it is misbranded, and would come under the misbranding section. At the same time, if it is not Paris green, but is some harmless material, then there is a substitution or some imitation of a product for the genuine, and at the same time there has been an adulteration in that, and a substance is sold which is inferior in quality or strength, and in which the inferiority is covered up by the use of the green coloring matter to make the public think it is something else.

Now, this defendant, then, having been brought into court on a charge that they were doing both, both misbranding the product, in the sense that ship-

ments were made which were not attended to as they should be. so as to see that the label was all right, and being charged also with having sent them out so that the purchaser would get an article that was adulterated, or where the inferiority was covered up, they took the consistent position which they should take if they were innocent, (and which they should properly be in if you should render a verdict of not guilty, that is, if the Government does not prove beyond a reasonable doubt that they were adulterating) then they took the proper position as to the misbranding because this statute does not provide that these acts must be done knowingly. If the head of a great drug company assumes that he is selling Paris green, and some of his clerks are substituting something else and the company should be benefiting from it, then the company may still be held responsible for the shipment. If the clerk was not profiting by it, but if he was doing it for the benefit of the company, the company could still be held responsible for the shipment.

If decomposed animal matter is allowed to form in the article that is shipped, the question whether the person who ships it knows it is there does not prevent the seizing of the article, or avoid a charge for shipping that kind of article without preventing the contamination if it comes within the statute, so that this statute is purposely framed so that it will protect the public, whether the public wants to be protected or not in the first place, whether or not the shipper intentionally evades the law, or whether a defendant is found evading the law, even though he intended or thought that he was complying with it; so, I say, that if this defendant is innocent of the charge of adulterating, they did the proper thing under these circumstances in coming in and saying these goods were found without the rubber stamp that constitutes a violation of the statute of misbranding, and we, therefore, plead guilty to that. We will avoid it in the future. We will change our label and the matter is trivial, and the court should impose a penalty that corresponds with the occurrence.

Now, that part of the case is left in that condition up to the present time. I have had to go into this at length, because this case is simple as to issue, but there is a whole lot to it as the matter is left to you. There is lots of evidence, lots of matters for you to consider. This case, at the present time, stands just upon the position of the defendant as I have outlined it saying that they admit the court must deal with this question of not having the rubber stamp on from the standpoint of misbranding, and that they have done no more wrong and, therefore, they say the Government has not proven the charge that is brought against them. So, now you must come to the question of whether there was any other element, any other act, because if this is all there was to it, then this question of adulteration and addition would be not only trivial, but the case would not fall under the adulteration side of the statute.

The Government then says this: Assuming that these particular boxes did go out, and assuming that no officer knew about it, and assuming that that particular leaving off of the rubber stamp was not intentional, then we still make the charge that the goods were sold for the purpose of supplying a dealer who would not buy artificially colored macaroni for what appeared to him to be natural colored macaroni, that is, macaroni made of this durum semolina, which would give that color, and that he was influenced to buy this because the price was not as high as it would be if the color were produced by the use of a durum semolina, and he was induced to buy this because he had a trade which wanted that kind of macaroni, or macaroni of that color, and in order to make this particular sale the goods were sent out without anything to indicate to this customer that he was getting something that was not up to the standard which he was buying in quality and in color. Now, if such a charge as that is brought against a man under this statute, and, if by accident or by carelessness, two boxes went to Cincinnati and two boxes went to Newark, or even if 113 or 160, whatever the quantities were—you will take the testimony, because you must recollect the testimony as the witnesses give it, not take what I say, by way of illustration, because neither Mr. Brown, nor Mr. France, nor I, are trying to give you the testimony, but we have referred to it, as when I point to a box and call it a box, and if you want to qualify my statement that it is a broken box or a poor box, you could do so, but I am illustrating—as I say, if this shipment of 113 boxes or 60 boxes, whichever they were, got to Cincinnati or to Newark with something wrong in the labeling or packing, so that, for instance, they were marked as macaroni from durum semolina but were in fact macaroni from wheat *flour*, and these Cincinnati people or Mr. Koch did not find that out, and if thereby he was misled into buying it for something else, even if the defendant admitted that a mistake was made and that in the future they would

avoid mistakes, yet they were within the prohibition of the law. It would be for the Court to say how they should be punished, and whether it should be treated as a casual matter and they should be absolved, provided they did not do it again. But this particular charge assumes seriousness for the reason that even though these other dealers who have testified in Court told you they do not compete in the sale of these particular products, that is, that they did not put on the market products which would compete with this particular trade, nevertheless there has been testimony that there is a trade with certain people that have been educated from the Italian or foreign standards and wish this material colored—macaroni. They wish it made either with or without color, according to what they do wish, but those who want it without color do not want to buy that which is artificially colored. Those who do want artificially colored, or who are willing to take artificially colored, are entitled to know, under the statute, what they are getting, so that the price will correspond to the goods that they receive.

Now, when the Government charges this defendant with conducting its business in such a way that it is putting on the market a product which will be sold to the jobber for sale to the customers who want a yellow product, which is uncolored, and to a trade that would consider a product inferior, or lacking in strength and in quality that they are trying to buy, if that yellow color is not produced by durum wheat semolina, if this defendant was deliberately supplying that trade with something that from that standard was inferior and was using the method of misbranding the boxes, or accidentally allowing a foreman of the label room to be careless in not checking up the product upon which these labels were going, and if that was occurring, then this defendant was doing something which assumed importance and illustrates to you the wide difference between the charge of misbranding and the charge of adulteration. As I say, if this case had involved nothing more than whether or not those two boxes might be called adulterated as well as misbranded, the matter might easily have been left to me to say whether or not there should be a severe penalty or a trivial penalty because of the accident. So, the question of misbranding has been left to me properly by the defendant, and you can not take from their admission that these two boxes did not have the label on; that therefore they violated the statute as to adulterating. You can not take that admission as any evidence against them at all, because it is in their favor. In the same way, if the Government had not accepted, not presented the charge that they were adulterated (and therefore coming within this statute) for the sake of selling their product in a way that they could not have sold it otherwise, the whole matter would have been disposed of upon the same statement by the defendant that these two boxes might come within the statute, but if so, it was accidental and made no difference, and you would not have to consider the question, but the Government, instead of doing that, charges that this defendant was violating the statute in sending out a product that would be sold to a certain trade that required a certain standard, or a certain quality, or a certain kind of product in the goods which it would buy, and that therefore this product is adulterated and that it was meant to be adulterated, and that it was meant to be sold as natural colored goods, that therefore the Government charges that it was inferior, and that the inferiority was concealed by the way in which it was colored, or through the addition of this coloring matter.

Now, I referred early in the case to the matter of the Lexington Milling Co. in which some flour was bleached; that finally went to the Supreme Court of the United States, and they decided that under this fifth section an added poisonous or deleterious ingredient which might render the article injurious to health required proof that the bleached flour was harmful to health, and that if the bleaching material was so small in quantity that it would not have any effect on the health, the mere change of appearance in the flour did not bring it within that particular section. In deciding that case the Supreme Court of the United States referred to these other provisions and they used language which seemed to bring in all of these sections. They seemed to say that if the inferiority, or the substitution, did not produce some article or have some effect which would damage health, that the article was not adulterated, but if you look into the case carefully, and examine the section under which it comes, you will see that in the flour case they were talking about the addition of *poison* which would be harmful to health and that we have something entirely different here, because there is no accusation that this coloring matter would affect health, or that the use of one ounce in 12,000 pounds would make

any difference under this health section. This charge comes down solely to the question of using an adulterating material (that is an artificially added material) so as to cover up inferiority in quality or strength by the change in color, and up to that point the question is simple of statement and plain of meaning. That is the charge that is made, but when you get into this question of what is inferior in quality or strength, then you have got to have a standard. Congress had the power to pass that law. Congress had the power to use this language, and you jurors and I must apply that law according to what Congress says. When Congress provided that if it was injurious to health it would come under one section, and if not injurious to health it would come under that other section, the Supreme Court was bound to follow Congress by saying that something that was not injurious to health was not adulterated *by a poison*. So, when we consider the proper section as to what is "inferior in quality or strength," we must try to find out what Congress meant. If there were anything to indicate that Congress meant if it should be inferior in bran or in gluten, or in the materials that are classified as protein in building up the body, if that were the general meaning of the word inferior, then you can see that the argument would come down to a definite limit. On the other hand, if the word inferior meant something cheaper in price, and there were anything in the law to indicate that Congress meant it was inferior in price or cheaper, then we would be limited to that meaning of the word inferior. If there were anything to indicate that when they were talking about Paris green (that is not a food—I use it, you see, as an illustration) they should say Paris green that was inferior for suiting the appetite of some particular striped potato bug, instead of one that had spots, why we would have to take that as a test. The charge here is that this is an inferior article of food for the purpose for which it is to be used as an article of food. If it is to be put on the market or sent out to a market where a person sending it knows that its saleability will depend upon the demand by Italians who want to purchase articles that have a certain color and desire the goods purchased to be made in a certain way (even if the process involves additional steps and a little increase in cost is involved in order to effect the sale of the goods even at the expense of that little increase in cost), so as to make it inferior in quality or strength from the standards that it is to be measured by in being put upon the market for that particular trade, and if any concern sends out goods so as to meet that particular demand by something that has other articles, or has coloring matter put in, so as to sell goods to meet that particular demand, then he would come within this definition of inferior in strength and quality from the standards or standpoint of the purpose for which it is to go.

So here in this case you must decide whether these shipments were made, you must decide whether the articles that were taken by the inspectors were the articles that were shipped, whether the articles taken by the inspectors were the ones that are produced here and that have been analyzed. You must decide whether or not the analyses are correct and the facts are the way the witnesses present them to you. So far as matters are not disputed (and so far as this plea of misbranding is concerned, the defendant did not question making the shipment) inasmuch as they told you that the shipment was made of course you can assume that is proven. You have to then go on and see when the articles were shipped, if you find that they were shipped, as I have said, whether this adulteration was intended or whether they were sent out in just a casual way so that we would have to consider whether or not the label was accidentally put on. The charge is, the matter you have to consider is, whether or not the defendant was putting on the market, and intended by this shipment to put upon the market, goods which were inferior in quality and strength to those which that market to which the goods were being sent would require, and whether thereby they were selling something which was inferior in quality and strength to that which was being bought so far as the people who bought it knew, and whether the label upon the boxes was the means of covering up the misbranding so that the fact of the adulteration, if you find that it was adulterated, in that sense, was covered up, and if the Government proves beyond reasonable doubt that the defendant was sending out boxes or allowing its clerks to send out boxes that did not disclose properly the contents so as to comply with the statute, and if these articles were therefore misbranded in that sense. then if the misbranding was a part of putting these goods on the market so as to dispose of the goods that were adulterated in the sense that I have

referred to in that part of the statute, if the Government shows all that beyond reasonable doubt, then your verdict should be guilty, and the question would rest with the court as to how the matter should be treated. If the Government does not prove the case to that extent, if you have a reasonable doubt as to any material step in the proof that leads you up to the question of determining a verdict, then your verdict should be not guilty, and, of course, you will have to remember and distinguish between counts 1 and 3, count 1 being the Cincinnati transaction and count 3 the Newark transaction, so that you could render a verdict of guilty or not guilty as you might find the facts as to either count or as to both.

Now, what requests and exceptions have you?

Mr. BROWN. I ask your honor to charge the jury this: That if the rubber stamps "artificially colored, made in the United States" were on these two boxes, exhibits one and five, that the contents would neither be misbranded nor adulterated?

The COURT. That is, if the goods were sent out?

Mr. BROWN. The same goods. Which is saying, that they were artificially colored so that people could buy them or not, as they saw fit, in that respect then they would not come within the statute at all because they would be just what this particular box would be purported to be.

The COURT. I so charge. It is evident that this box did not have the rubber stamp on, and therefore we come down to the serious question as to the way they went out, not simply the mere sending out of these two particular boxes.

Officer sworn and jury retired.

Jury returned with a verdict of guilty.

Mr. BROWN. I move to set aside the verdict on the ground it is against the weight of evidence, also move to set aside the verdict on the ground there was absolutely no proof of any intent on the part of the defendant and that the verdict of the jury is not found in accordance with the charge of the court, and is contrary to the law as laid down by the court in its charge

The COURT. I will deny your motions and give you an exception in each.

Mr. BROWN. I renew my motions to set aside the verdict on the ground that there was no proof of the commission of any crime within the contemplation of the statute.

The COURT. You may have an exception.

The jury thereupon retired and after due deliberation returned a verdict of guilty upon the charges of adulteration. The defendant company thereupon filed its motion to set aside the verdict, and said motion was denied by the court. On February 17, 1917, the defendant company was sentenced to pay a fine of $398 upon the plea of guilty as to the charges of misbranding and upon the verdict of guilty returned by the jury as to the charges of adulteration, as will more fully appear from the following remarks of the court (Chatfield, *J.*):

The record shows that the defendant was brought into court upon an information based on two interstate shipments. There were four counts, one as to misbranding and one as to adulteration with respect to each shipment. The two counts as to misbranding were disposed of by the plea, and the two counts as to adulteration were disposed of by the verdict of the jury. The maximum would therefore be four penalties which, for a first offense, would be $200 each. It appears from the record of the court, and the fact is not contested, that this defendant was previously indicted and punished for a charge of misbranding, with relation to substantially a similar form of label, in this court. The charge of misbranding in the previous information should have brought home to the defendant the meaning of the statute and the purpose for which the law was intended. It makes no difference whether in the particular instance injury to an individual or harmfulness as a food product is actually shown. The court does not consider that a second offense is a part of the crime, nor does it consider that a person should be put on trial before a jury upon the issue of whether or not it is charged with a first or second offense. That question has entirely to do with the remedy, and if the accusation of the second offense is disputed it can be summarily heard by the court, or the court may have a doubt and impose sentence within the maximum of the first offense. The second offense provision is not a mandatory change in the nature of the crime. I shall therefore treat this matter as consisting

of two offenses, one relating to the shipment to Cincinnati, and the other, the shipment to Newark, New Jersey, and shall consider that it is possible to impose a fine for four separate violations, and that on two of these the maximum would be $200, and as to the other two a maximum of $300 would be imposed which would make a thousand dollars in all. Recognizing the circumstances, I think that a fine of $398 divided in two parts of $199 each, so as to bring the sentence within the specific first offense sentence upon the two adulteration counts, also stating that the total of the fine is imposed because of the nature of the second offense, and also because of the presence of the charge of misbranding as well as of adulteration, is sufficient to indicate the application of the statute to the matter. The Government may have judgment upon the sentence if it desires.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5522. Adulteration of oysters. U. S. * * * v. Samuel M. Robinson (S. M. Robinson & Co.). Plea of guilty. Fine, $50. (F. & D. No. 6102. I. S. Nos. 11361–m, 11367–m, 11644–m, 12146–m, 12153–m.)

On May 10, 1917, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Samuel M. Robinson, trading as S. M. Robinson & Co., Baltimore, Md., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about November 27, 1916, from the State of Maryland into the State of Ohio, and on or about December 16, 1916, November 13, 1916, November 27, 1916, and December 19, 1916, from the State of Maryland into the State of Indiana, of quantities of oysters which were adulterated.

Analyses of samples of the article in each shipment by the Bureau of Chemistry of this department showed that it contained added water.

Adulteration of the article in each shipment was alleged in the information for the reason that a certain substance, to wit, water, had been substituted in part for oysters, which the article purported to be, and had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength.

On May 10, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $50.

CARL VROOMAN, *Acting Secretary of Agriculture.*

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5523. Misbranding of "Owl Brand Cottonseed Meal." U. S. * * * v. Roberts Cotton Oil Co., a corporation. Plea of guilty. Fine, $50 and costs. (F. & D. No. 6293. I. S. No. 27843–e.)

On September 17, 1915, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Roberts Cotton Oil Co., a corporation, doing business at Cairo, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on December 10, 1912, from the State of Illinois into the State of Indiana, of a quantity of an article labeled in part, "Owl Brand Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Ether extract (crude fat) (per cent)	6.08
Protein (crude protein) (per cent)	36.06

Misbranding of the article was alleged in substance in the information for the reason that the statement appearing on the sacks containing the article, to wit, "* * * contain not less than 7% crude fat, 41% crude protein * * *." regarding the ingredients and substances contained in said sacks, was false and misleading and deceived and misled the purchaser; for the reason that, in truth and in fact, said article did not contain 41 per cent of crude protein and 7 per cent of crude fat, but contained only 36.06 per cent of crude protein and 6.08 per cent of crude fat.

On March 27, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5524. Misbranding of high protein tankage. U. S. * * * v. Sulzberger & Sons Co., a corporation. Plea of guilty. Fine, $200 and costs. (F. & D. No. 6319. I. S. Nos. 13512-k, 13513-k.)

On August 17, 1916, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Sulzberger & Sons Co., a corporation, doing business at Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 19, 1914, and January 2, 1915, from the State of Illinois into the State of Indiana, of quantities of an article labeled in part, "High Protein Tankage," which was misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that the shipment of September 19 contained 54.3 per cent crude protein, and that of January 2, 48.94 per cent of crude protein.

Misbranding of the article in each shipment was alleged in the information for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Guaranteed Analysis Pure Protein 60%" (or "Sulzberger & Sons Company, of Chicago, Ill., guarantee this Sulzberger's High Protein Tankage to contain not less than * * * 60.0 per cent of crude protein," as the case might be) was false and misleading in that it indicated to purchasers that said article contained 60 per cent of pure protein (or crude protein); and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained 60 per cent of pure protein (or crude protein) when, in truth and in fact, it did not, but contained a less amount thereof, to wit, 54.3 per cent (or 48.94 per cent).

On March 17, 1917, the defendant company entered a plea of guilty to the information, and on April 9, 1917, the court imposed a fine of $200 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5525. Adulteration and misbranding of tomato conserve. U. S. * * * v. Rudolph Gross, Anna Gross, Alexander Gross, and Felix Gross (Ignatius Gross Co.). Pleas of guilty. Fine, $25. (F. & D. No. 6403. I. S. Nos. 315-h, 1343-h, 2140-h, 3821-h, 6440-h, 7204-h, 7815-h, 7826-h, 7827-h.)

On July 18, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 24 counts against Rudolph Gross, Anna Gross, Alexander Gross, and Felix Gross, trading under the firm name of Ignatius Gross Co., New York, N. Y., and doing business under the trade names of the Independent Packing Co., and the American Conserve Co., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, either by themselves or through their agents, the Universal Shipping Co., and C. D. Stone & Co., during the months of August, September, October, and November, 1913, and February, 1914, from the State of New York into the States of Illinois, Massachusetts, and Pennsylvania, of 7 different consignments of tomato conserve; and further, the sale by said defendants under guarantees that the article was not adulterated or misbranded within the meaning of the said act, as amended, during the months of December, 1913, and February, 1914, of 2 additional quantities of tomato conserve, which said article, in the identical condition in which it was received, was shipped by the purchasers thereof, during the months of December, 1913, and March, 1914, from the State of New York into the States of Pennsylvania and Georgia, respectively, in further violation of the said act, the article being adulterated in some of the shipments, misbranded in other shipments, and adulterated and misbranded in other shipments.

Analyses of samples of the article by the Bureau of Chemistry of this department showed in 8 of the shipments that it consisted of a decomposed vegetable matter, and in 8 of the shipments that the cans containing the article were short weight.

Adulteration of the article in part of the shipments was alleged in the information for the reason that it consisted in whole or in part of a decomposed vegetable matter.

Misbranding of the article in certain shipments was alleged in substance for the reason that the statement borne on the label attached to the cans containing the article, to wit, "This can contains 15 oz. net weight," was false and misleading in that it indicated that the contents of said cans weighed 15 ounces; and for the further reason that the article was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that the contents of said cans weighed 15 ounces, whereas, in truth and in fact, it did not, but weighed a less amount.

On April 2, 1917, the defendants entered pleas of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5526. Misbranding of "Cerebro-Spinal Nerve Compound." U. S. * * * v. Charles M. Simpson (Dr. C. M. Simpson's Medical Institute). Tried to the court and a jury. Verdict of guilty. Fine, $200 and costs. Judgment of conviction affirmed by the Circuit Court of Appeals. (F. & D. No. 6749. I. S. No. 4287–h.)

On October 20, 1915, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information in 2 counts against Charles M. Simpson, trading as Dr. C. M. Simpson's Medical Institute, Cleveland, Ohio, alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about May 28, 1914, from the State of Ohio into the State of Minnesota, of a quantity of an article labeled in part, "Cerebro-Spinal Nerve Compound," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted principally of alcohol, bromid, ammonium carbonate, and organic matter.

Misbranding of the article was alleged in the first count of the information for the reason that it contained 0.36 per cent of alcohol, and the package containing the article failed to bear a statement on the labels of the bottle and carton of the quantity or proportion of alcohol contained therein. It was alleged in substance in the second count of the information that the article was misbranded for the further reason that certain statements appearing on the carton, and certain statements included in the circular accompanying the article, falsely and fraudulently represented it as a treatment of all diseases which are really the result of diseases of the brain, spinal cord, medulla oblongata, the nerves given off from each of them, all nervous diseases and heart troubles; and as a valuable remedy for lost nervous strength, nervous prostration, spinal diseases, mania, melancholia, and neurasthenia; and as a remedy for dementia or acquired feeblemindedness, and katatonia or alternating insanity, when, in truth and in fact, it was not.

On November 20, 1915, the defendant entered a plea of not guilty to the information, and on November 29, 1915, the case came on for trial before the court and a jury. During the progress of the trial it was ordered that the first count of the information be dismissed, as will more fully appear from the following remarks by the court (Clarke, *D. J.*):

Gentlemen, I have concluded that the first count in this information should be dismissed. The charge is that goods shipped and delivered for shipment as aforesaid, said articles of drugs was then and there misbranded within the meaning of said act of Congress in that it contained 0.36 per cent of alcohol, and that the package containing the said article then and there failed to bear a statement on the labels of the bottle and carton of the quantity or proportion of alcohol contained therein.

You will see that in the count it is set out that the carton did contain a statement that this bottle contains about one-third of a drop of alcohol to each teaspoonful. Now, there has been no evidence to indicate that this statement of the quantity of alcohol is not correct, and of course, I assume that if it was not a reasonable approximation to the amount of alcohol which the analysis shows, counsel would have to have testimony. Therefore, it seems to me, under the state of the proof as it now is, the count is, to say the least, contradictory. The case will proceed on the second count.

The trial of the case was then resumed, and after the submission of evidence and arguments by counsel the following charge was, on November 30, 1915, delivered to the jury by the court (Clarke, *D. J.*):

Gentlemen of the jury, I am submitting this case to you upon the second count of the information only. In this count the Government charges that on the 28th day of May, 1914, the defendant, Charles M. Simpson, trading as Dr. C. M. Simpson's Medical Institute of the City of Cleveland, State of Ohio,

unlawfully shipped from the city of Cleveland, Ohio, to the city of St. Paul, in the State of Minnesota, 1 dozen bottles inclosed in cartons (which simply means pasteboard boxes) which contained an article designed and intended to be used for the cure and mitigation of diseases of man, and that these bottles or rather the pasteboard boxes in which they were shipped were branded or marked, and contained a circular within them and that upon the carton and circular were printed certain statements which were false and fraudulent as to the curative or therapeutic properties or contents of the bottles. "Therapeutic" is a word that is used in this count and has been frequently used in the testimony, and as used in this case it means simply healing or curative properties of any substance to which it may be applied.

Now, the statements appearing on the pasteboard box or carton which the Government charges were false and fraudulent are as follows, viz:

"Dr. C. M. Simpson's Cerebro-Spinal Nerve Compound, a valuable remedy for lost nervous strength and treatment of all diseases which are really the result of the diseases of the brain, spinal cord, medulla oblongata and the nervous diseases given off from each of them.

"Dr. C. M. Simpson's Remarkable Discovery for the treatment of all nervous diseases, also heart troubles * * * a most valuable remedy for nervous prostration, spinal diseases * * * melancholia, neurasthenia."

And the statements as to the therapeutic or curative effects of the substance contained in the bottles, which it is charged were printed in the circulars inclosed in the pasteboard boxes with the bottles are as follows:

"For * * * dementia, or acquired feeble-mindedness, katatonia or alternating insanity."

The charge of the Government is that these statements as to the curative properties of the substance which the defendant was selling were fraudulent and false and that the substances did not contain ingredients or medical agents effective among other things as a remedy for the diseases which the statements which I have read to you from the carton and from the circular contained.

The Government claims that these statements were not only false when thus used on the cartons containing the bottles and in the circular, but that they were made with the fraudulent purpose of inducing persons sick or afflicted with one or more of the diseases named, to purchase the so-called remedy so that the defendant might make money out of the sale of it.

The act of Congress under which this charge is being prosecuted is entitled "An act for preventing the manufacture, sale, or transportation of adulterated or misbranded or poisonous or deleterious foods, drugs, medicines, and liquors, and for regulating traffic therein, and for other purposes."

This is important legislation intended to protect the people so far as this case is concerned from the transportation and sale of misbranded medicines, experience having shown that men and women afflicted with disease are disposed to try a professed remedy, no difference how useless or even harmful it may be if it is strongly recommended, and it is to protect the sick and afflicted and people who are easily imposed upon, from fraudulent practices of the unprincipled and avaricious that this law was passed. It is a wise law and in proper cases should be rigidly enforced.

It is admitted by the defendant that the bottles in the pasteboard boxes or cartons were shipped from Cleveland to St. Paul, Minn., as charged in the information. It is also not questioned that the boxes or cartones had printed on them the language I have quoted to you from the information as constituting the charge of the Government against the defendant. The language which the Government charges was falsely and fraudulently used was not all that was printed upon the carton or in the circular, but the entire inscription is in evidence, and you may look to any other part of the printed matter to determine whether the language especially set out in this second count was or was not falsely and fraudulently used.

You will note, gentlemen of the jury, that before you can find the defendant guilty, you must find not only that the statements charged in the information were false, but that the defendant knew they were false when he used them, and that he used them for a fraudulent purpose. This is a criminal case and so the degree of proof that is necessary to convict the defendant is higher and greater than is sufficient in a civil case to support a verdict.

Before you can find the defendant guilty as charged in the information, you must be satisfied not by a preponderance of the evidence as in a civil case, but you must be satisfied beyond a reasonable doubt both that the statements set

out in the second count were false, and also that they were fraudulent. The burden of thus proving the defendant guilty beyond a reasonable doubt is on the Government.

The expression "reasonable doubt" seems to me to be so clear, plain, and exact an expression that to attempt to define or explain it is more likely than not to obscure its meaning. You all know that doubt as to how a case should be decided is an uncertainty of mind arising from the evidence introduced in the trial or the lack of evidence which may be necessary to create a clear conviction with respect to the guilt of the accused. Such a doubt springing from evidence, or from the lack of what you may think is necessary evidence, if honestly entertained, is a reasonable doubt such as is meant when the expression is used in this charge. This doubt, in order to justify your making it the ground of a verdict of acquittal, should be of such a character that it would require some evidence to remove it. It should not be a doubt raised by a mere whim, caprice, or prejudice on the part of a juror.

The rule is intended to be a shield for the innocent and not as a protection for the guilty.

The pasteboard cases or cartons with the inscriptions thereon and the circular which was in each of the cartons and which contained the statements, which are charged by the Government to be false and fraudulent, have been introduced in evidence and will be before you in your jury room.

The Government has produced a witness who has analyzed the contents of one of the bottles and has stated what he found as the result of his analysis. An analysis has also been made of the compound by a witness called by the defendant. So far as the curative properties of the compound are concerned, these two analyses do not differ substantially.

The Government has called physicians who have testified, as you have heard, that in their opinion the ingredients found in the bottle analyzed by the Government chemist are not effective as a remedy for the disorders which it is stated upon the label, and in the circular, and enumerated in the second count it is effective in the treatment of, and they have testified that in their opinion there is no single combination of substances or drugs which would be effective as a remedy for all of the diseases which are enumerated in the charge in this second count.

On the other hand, the defendant has called several witnesses who state that they have used the compound as a medicine and that it has proved in their cases effective as a remedy for the disorders with which they have stated to you they were afflicted. The question involved in this case is peculiarly one of professional learning and it is significant that not a single doctor has been called by the defendant. One young doctor was called as a witness but on preliminary examination he said he was not competent to testify as an expert physician upon the subjects involved in the case, and he was dismissed without testifying. This is a fact which you should take into consideration in arriving at your decision of this case.

Gentlemen, you will take all of this evidence into consideration and determine first of all whether the statements which are referred to in the second count and which I have read to you with regard to the therapeutic—that is, the curative properties of this preparation—were false, and in deciding this question you should take into consideration all of the evidence which has been produced by the Government, as well as that produced by the defendant.

If you find that the statements on the cartons and in the circulars which are set out in the second count were false, then before you can find the defendant guilty, it will be necessary for you to go further and consider whether such statements were fraudulently made. If you find beyond a reasonable doubt that the statements set out in this second count with respect to the curative properties of this compound were false, and that they were made with the fraudulent purpose of deceiving people, and so inducing them to buy the compound, then you should return a verdict of guilty. But if you find that these statements were not false, or that they were not made with the fraudulent purpose of deceiving people into purchasing and using the compound, then you should return a verdict of not guilty.

Gentlemen of the jury, you will be furnished with two forms of verdict, one finding the defendant guilty, and one finding him not guilty. You will fill in one of these forms of verdict as your decision of the case may render proper and have the verdict signed by your foreman and return it into court.

(Addressing counsel:) Gentlemen, have you any suggestions or exceptions?

(None.)

(Addressing jury:) You may retire and consider the case.

The jury thereupon retired, and after due deliberation returned a verdict of guilty on December 1, 1915, and the court sentenced the defendant to pay a fine of $200 and costs. On December 2, 1915, the defendant by his counsel filed his motion that the verdict of the jury and the judgment of the court be set aside and a new trial be granted, and on January 6, 1916, the said motion was overruled by the court.

On March 6, 1916, the defendant filed his petition for a writ of error and his assignment of errors, and on May 12, 1916, the order allowing the writ of error was entered and the case was sent to the United States Circuit Court of Appeals for the Sixth Circuit.

On March 16, 1917, the case was submitted to the said Circuit Court of Appeals for the Sixth Circuit, before Knappen and Denison, circuit judges, and Sater, district judge. On May 8, 1917, the case having come on for final disposition, the judgment of the lower court was affirmed, as will more fully appear by the following decision of the said Circuit Court of Appeals (KNAPPEN, *C. J.*):

Plaintiff in error was convicted, upon trial by jury, under an information charging the interstate shipment of certain drugs (in violation of the Food and Drugs Act, June 30, 1906, 34 Stat. 768, as amended by the act of August 23, 1912, 37 Stat. 416), alleged to be misbranded in that the label of the carton or package containing the drug (as well as a circular therein) contained false and fraudulent statements regarding the curative or therapeutic effect of the drugs. But two grounds for reversal are presented.

1. The first ground is that the information was insufficient in law. It was accompanied by affidavits of four persons relating in part to the actual shipment of the offending articles and the presence in the inclosed packages of the label and circular referred to, and in part to the chemical analysis of the drugs and the alleged falsity of the claims made as to their therapeutic effect.

The information was not sworn to, but states that the court was "given to understand and be informed upon the oaths of * * * whose affidavits are hereto attached and made a part hereof, as follows, to wit." Two of the affidavits were sworn to before notaries public. It is urged that the information was insufficient because not upon the oath of the prosecuting officer, but solely upon oaths of the witnesses by affidavit, and that oaths taken before notaries public were invalid.

We need not consider whether the objection would have been good had it been made in the court below. Defendant in fact pleaded not guilty to the information, without demurring or moving to quash, and the record does not indicate that the attention of the district court was ever directed to the alleged insufficiency of the information. Unless it was void, the question presented can not for the first time be raised in the appellate court, unless a refusal to so consider it would shock the judicial conscience. *Keliher* v. *United States*, C. C. A. 1, 193 Fed. 8, 10. Had there been no affidavit of witnesses, the information would not have been void for lack of the oath of the prosecuting counsel (*Weeks* v. *United States*, C. C. A. 2, 216 Fed. 292); and we do not regard the information as showing that it was filed without investigation by the district attorney (see *Frank* v. *United States*, C. C. A. 6, 192 Fed. 864, 867). The objection is purely technical and without merit, and was waived by pleading to the information without raising objection. *People* v. *Harris*, 103 Mich. 437; *People* v. *Turner*, 116 *Mich.* 390; *Bartlett* v. *State*, 28 O. St. 669. It is also urged that the information does not charge defendant with knowledge of the alleged false and fraudulent character of the representations made. We assume, for the purposes of this opinion, that such allegation is necessary. The gist of these representations, so far as need now be stated, is that the article was "a valuable remedy for lost nervous strength and treatment of all diseases which are really the result of diseases of the brain, spinal cord, medulla oblongata and the nerves given off from each of them." The information alleged that these representations were (omitting the words we have bracketed) "false and fraudulent in this, that the same were applied [by defendant] to said article knowingly, and in reckless and wanton disregard [on defendant's part] of their truth or falsity, so as to represent falsely and fraudulently to the purchaser thereof, and create in the minds of purchasers thereof an impression and belief that it was," etc The criticism we

are now considering would be fully met had the information actually contained (as it did not) the words above bracketed But the defect was not substantial; it was only formal. The information charged that the shipment was made by defendant "trading as Dr. C. M. Simpson's Medical Institute," and that the name of the article given on the label of the carton was "Dr. C. M. Simpson's Cerebro-Spinal Nerve Compound." The natural construction would be that it was defendant whose knowledge and reckless and wanton disregard of the truth was intended to be charged. The Federal statute (Rev. Stat., 1025) expressly provides that an indictment shall not be affected "by reason of any defect or imperfection in matter or form only which shall not tend to the prejudice of the defendant." *Rosen* v. *United States*, 161 U. S. 29; *Price* v. *United States*, 165 U. S. 311; *Tyomies Pub. Co.* v. *United States*, C. C. A. 6, 211 Fed. 385, 389. The rule applicable to an information is no less liberal. Its averments of facts constituting the offense need be only so certain and specific as fairly to inform defendant of the crime intended to be alleged, and as to make the judgment of conviction or acquittal thereon a complete defense to a second prosecution of the defendant for the same offense. *United States* v. *Hess*, 124 U. S. 483, 486, 487; *Stokes* v. *United States*, 157 U. S. 187; *Bennett* v. *United States*, C. C. A. 6, 194 Fed. 630, 632; *Hocking Valley R. R. Co.* v. *United States*, 210 Fed. 735. It is clear the information fulfilled these requirements.

That the criticism urged is purely technical and without merit, in that defendant understood that his own intent was in issue, is affirmatively shown by the fact that at the opening of the trial defendant admitted that he made the shipment in question; that it contained the cartons, bottles, and wrappers exhibited in court, and that he was the proprietor and sole owner of the "Dr. C. M. Simpson Institute"; and by the fact that as a witness in his own behalf, and under examination by his own counsel, he testified directly to the absence of intentional false branding and fraudulent intent. It is finally urged that the information does not show that the alleged misrepresentations were in the "ultimate container," that is to say, in the package as it reaches the consumer. *McDermott* v. *Wisconsin*, 228 U. S. 115, 130. This objection, as well as the preceding ones, must be considered in the light of the fact that the question was not raised below. We think the information should fairly be interpreted to mean that the misrepresentations were intended to accompany the bottles into the hands of the consumers. It is alleged that the shipment consisted of "certain packages," and that the packages contained the circular or pamphlet later described therein; that one of the alleged misrepresentations appeared "on the label of the carton aforesaid," and that the other was "included in the circular or pamphlet aforesaid." It is a matter of common knowledge that proprietary medicines in bottles are usually sold to the consumer in cartons, and that the latter usually contain circulars or other advertising matter. We are not impressed with the suggestion that the circular was charged to have been inside "the article of drugs."

2. The remaining complaint is addressed to the denial of the defendant's motion to direct verdict in his favor. We think the motion was properly denied. It seems unnecessary to set out in full the exact language of the representations alleged to be contained in the packages. It seems enough to say that defendant's compound was not only represented generally to be a valuable remedy for the treatment of all diseases "resulting from diseases of the brain, spinal cord, and medulla oblongata, and the nerves given off from each," "a remarkable discovery for the treatment of all nervous diseases," but also a "remarkable discovery for heart troubles," as well as a "most valuable remedy for nervous prostration, mania, melancholia, and neurasthenia." There was substantial testimony from competent medical witnesses that there was no remedy applicable to all the diseases mentioned; that medical science and medical experience furnish no support for the broad claims made for defendant's remedy; that "there is no one medicine that will prove a valuable remedy for all" the diseases enumerated. There was further substantial testimony from competent witnesses that bromides, which constitute a prominent ingredient in defendant's remedy, are sedative in their nature and in ordinary doses, not stimulating; that while thus helpful in quieting an exalted or excited state of the nerves, as in many cases, including some cases of mania, they are not only [not] helpful, but are positively injurious in depressed conditions, as in melancholia; that there is no one remedy for all spinal diseases, nor for all cases of neurasthenia, or heart trouble, nor for all cases of melan-

cholia or of mania; that some diseases of the heart require sedatives, others stimulants; that the same is the case with neurasthenia and certain other nervous diseases mentioned; and that in some cases of nervous prostration and other nervous affections the administering of sedatives or depressants is harmful; that bromides are not suitable to the treatment of the mentally and physically depressed. There was further testimony to the same effect as to others of the diseases included, either specifically or by general description, in the claims made for the remedy; also that defendant's compound was dangerous to intrust to the hands of a layman. Aside from defendant's own testimony, there was no competent medical testimony in opposition to that presented by the Government, to the effect that the claims made for the medicine were contrary to all medical science. The defendant's proposition that the presence of ammonium-carbonate neutralized the effect of the bromides as depressants was denied by medical witnesses for the Government. True, it appeared beyond dispute that bromides are beneficial, at least as a palliative in quieting the nerves and inducing sleep, in ordinary cases of nervous excitability; and there was testimony on the part of the defense that several persons had received benefit, indeed, many of them claimed to have been cured, by the use of defendant's remedy. But such testimony, at the most, bore only upon the question of fact whether the alleged representations were, as made, false and fraudulent. There was still room for a conclusion that substantial mischief resided in the claim of a universally efficacious remedy for the numerous and widely prevalent maladies; for the term "remedy" must at least imply a curative tendency, although not of course guaranteeing a cure. The defendant was a graduate physician, and the jury were justified, under all the evidence in the case, in presuming that he knew the falsity of the broad claim made for his compound.

The brief of defendant's counsel criticizes the admission of certain testimony, although we do not understand that such admission is relied on for reversal. We may say, however, that we have examined all the criticisms which are made the subject of either exception or assignment, and find no error.

The judgment of the district court is accordingly affirmed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5527. Adulteration of tomato pulp. U. S. * * * v. 5,060 Cans * * * of Tomato Pulp. Tried to the court and a jury. Verdict for the Government. Decree of condemnation, forfeiture, and destruction. (F. & D. No. 6811. I. S. Nos. 16511–k, 15484–k. S. No. C–294.)

On August 10, 1915, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 5,060 cans, each containing 1 gallon of tomato pulp, remaining unsold in the original unbroken packages at Sycamore, Ill., alleging that the article had been shipped on December 4, 1914, by the Ladoga Canning Co., Brownsburg, Ind., and transported from the State of Indiana into the State of Illinois, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a decomposed vegetable substance; for the further reason that it consisted in part of a filthy vegetable substance; and for the further reason that it consisted in part of a putrid vegetable substance.

On December 7, 1915, the Sycamore Preserve Works, Sycamore, Ill., claimant, filed its answer denying the allegations of the libel. On January 16, 1917, the case came on for trial before the court and a jury, and at the outset of the trial the charge that the article consisted in part of a putrid vegetable substance was withdrawn by leave of the court. The trial thereupon proceeded, and after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Landis, *D. J.*):

Gentlemen of the jury, in this case there is one fact for you to find, and that fact is whether or not the product involved in this inquiry was composed, in whole or in part, of decomposed or filthy vegetable substance. That is the issue which is tendered to you in this case. The matter comes into the Federal court because the substance was transported in interstate commerce, and solely because it was transported in interstate commerce. If it never had left the confines of the State of Indiana, it would be a matter for State determination, but being an interstate transaction, it falls within the jurisdiction of the act of Congress known as the Pure Food Law, and therefore the obligation and the authority of the Federal Government attaches to it. And the authority to seize having been exercised by its officers charged by law with the enforcement of its provisions, has set in motion the machinery that has cast upon you now the obligation of determining the fact whether or not the articles, as stated before, in whole or in part, are decomposed or filthy vegetable substance.

This is a civil action, and being a civil action, the rule is that the case of the United States is to be established by the preponderance of the evidence, or the greater weight of the evidence, as distinguished from what the rule would be in a criminal case where the doctrine of presumption of innocence, and the doctrine of reasonable doubt control.

Now, by preponderance of evidence is meant not which side has the great number of witnesses, but it is that side of this controversy on which is the believable statement of facts, as distinguished from the other side. One hundred witnesses testifying to a thing that is obviously untrue, or to a thing that is obviously an error, does not give to that side the preponderance of evidence against one witness testifying in favor of a thing that is obviously true. So, it is not to be determined solely by the number of witnesses.

Now, in determining here where is the preponderance, whether the preponderance is in favor of the accusation against the product, namely, that it is composed in whole or in part of filthy or decomposed vegetable substance, bring to bear upon this controversy that common sense and judgment that would characterize your consideration of a controversy away from court, at home, or in your business, dealing with a matter of concern to you personally.

The seizure in this case was made at Sycamore, Ill. The product seized is called tomato pulp. It was found in upward of 5,000 sealed cans. The charge of the Government, as I stated before, is that the pulp contains decomposed or filthy vegetable matter. The fact, therefore, for the witnesses is whether or not at the time the product entered interstate commerce—that is to say, when it was

put aboard cars at Brownsberg—it was in part filthy or decomposed in its contents.

Now, to determine the question, to elucidate to you the question respecting that matter, the United States presented a number of witnesses who testified as to examinations made by them of the product after its arrival at Sycamore—microscopists, biologists, and other expert witnesses—and they testified to you what they found, and they gave you, on the basis of that testimony, including in that testimony other evidence given by other witnesses of conditions, their judgment as to whether this commodity contained in part decomposed or filthy matter. There was evidence as to tests made by one or more of the Government's witnesses, in the tomato pulp manufacturing industry at canneries covering a substantial period of years, one witness dealing with tests made in the United States and in Italy, in connection with the preparation and manufacture of this article.

Now, the defendant, the manufacturer, or superintendent, secretary and treasurer of the manufacturing concern testified as to conditions at the plant, the treatment of tomatoes up to the time they went into the boiling vat, including inspection, cleansing and so forth. For the defendant, the witness Wesner testified. He gave you no evidence of tests such as you have in mind when you think of expert tests, that is to say, he did not use a microscope. He made no technical bacteriological test; he made no chemical test; there was no such evidence introduced by the defendant, that is to say, no expert evidence, the evidence being evidence based upon the test made by the witness who subjected the articles to an examination by the three senses, taste, smell, and sight.

There was introduced by the United States in rebuttal, after the close of the defendant's case, four bottles of an article testified to be pulp, and the witness testified that he manufactured it, and gave you the condition under which it was done. Those four bottles were submitted to the witness Wesner while he was on the stand, and he subjected them to the same test that he had previously testified he had subjected most of the articles in question here to, and which tests he made in your presence, and you recall his evidence as to the content of those four bottles, or jars. Now, I make no comment upon it, as to what that means in view of the evidence as to the content of the four bottles, what went into it, how it was made, what it was made of, but, I call it to your attention as being worth your while to recall and determine it, the weight of the evidence of the witness Wesner as to the sufficiency of the eye test and smell test of an article of this kind in an effort to determine its content with a view to answering the question, does it contain decomposed or filthy matter in whole or in part. Now, so much for that.

There were many witnesses called by the prosecution. In determining the weight you will give to their evidence, you have in mind many other things—I will include all the witnesses in this for the prosecution and the defense, experts and everybody else—having in mind first, the kind of witness he is, the kind of man, how the witness appears to you here, whether the witness seems to be engaged in an effort to deceive or mislead you to a false judgment in this case; and in determining that fact, ask yourselves the question about the various witnesses, what interest has this witness in deceiving and misleading the jury; what is to be gained by deceiving you. Then have in mind the intelligence of the witness as disclosed by his demeanor in the court room and on the stand, whether he knows what he is talking about, apparently. You are not obliged to accept the statement of a man that is inherently improper, that is repulsive to your intelligence, merely because he swears to it. Ultimately it is for you to put it in the scales and weigh it and to appraise it, what it is worth. What I have said in that respect applies to witnesses on both sides. If you find that any witness has started out here, or, being a witness, has entered upon the enterprise of telling you something that is not true, of getting into your mind a judgment about this controversy that is false or erroneous, you excuse that gentleman from this case entirely, respecting everything that he said, except insofar as any of the testimony he has given is corroborated by other witnesses, whose testimony you believe, or by facts and circumstances proved on this trial. In other words, in determining what the fact is here, decomposed or not, filthy or not, approach the controversy as I said a while ago, just as you would a controversy of concern to you at home or in your business.

Now, it is not a question solely whether this stuff—I do not use that word "stuff" in any significant way—this article, is fit or unfit for food. I will tell you why I say that. The evidence is this article is sterile; that means the contents has its injury producing qualities killed by heat; so that even though this article was 5 per cent bad, that is, 5 per cent bad tomatoes, and 95 per cent good tomatoes, or 10 per cent bad tomatoes and 90 per cent good tomatoes at the time the tomatoes went into the boiling vat down there in Brownsberg, the evidence in this case is, if you eat this tomato pulp, the 5 or 10 per cent rotten tomatoes have undergone such treatment that their power to injure you has been killed by the heat. I will say no more upon that. You gentlemen all understand that principle.

So I say, the question is not whether it is fit for food. The question is, whether or not, in manufacturing, the 10 per cent bad tomatoes did go in, or the 5 per cent bad tomatoes did go in. That is the question. And if you find it did, your verdict will have to be against the tomato pulp, even though you believe—even though you know that you could eat the whole cargo of the product without suffering any evil consequences.

I do not know whether I ought to say anything about the high cost of living which my brother Batchelder talked about. I hesitate to speak upon the subject that a lawyer brings in in his argument, with the broad latitude given a lawyer. I expect probably nobody ever enjoyed that latitude any wider, or further than I did when I was practicing law, but it is your business, and mine not to be enticed away from our duty, when we have submitted to us a question to decide, by getting into closing argument, that suggests to us considerations that may have a tendency away from court to induce us to take a liberal or broad view of subjects. There may be men on the jury that raise tomatoes; certainly there are men on the jury that eat tomatoes. Don't consider this controversy from the standpoint of either the man that raises tomatoes, or the man that eats them. Denude yourself of that, and decide this question as though you never would or had raised tomatoes, or never would or had eaten tomatoes. You can do that thing. The high cost of living has got nothing to do with this thing. At all events, counsel did not mean to solve the problem of the high cost of living, by having us eat bad tomatoes. He did not mean that.

Of course, if there is an order of destruction here, somebody has got to lose. That has not anything to do with your judgment. In a criminal case, if there is a verdict of guilty, somebody is punished, but in determining the question of fact whether or not the man is guilty, in determining the question of fact whether in this commodity there is filthy or decomposed vegetable substance, it won't afford you the slightest aid in finding the fact in this case to have in mind that if you reach a certain verdict somebody will lose. What happens to this tomato pulp in the event of a verdict of guilty—a verdict of condemnation, a verdict that it is composed in whole or in part of decomposed or filthy matter, is of no concern to you. It is to me. Wisely or unwisely, the law has cast upon the judge the authority and responsibility in the event of a verdict against the pulp by you, of disposing of the matter. And in deciding the question which the law has submitted to you, of course you will not be influenced even to the slightest extent by any thought or speculation as to what I may do with it, in the event you reach a verdict a certain way.

Any exceptions, Mr. Batchelder? Any suggestions, Mr. Prosecutor?

Mr. DICKINSON. I have none, your honor.

The COURT. I neglected to give the technical legal names of the litigants. In this case, in this kind of a proceeding, the paper that is filed by the United States, which contains the formal accusation against the pulp is called a libel; in a criminal case an indictment; in a civil action for damages, a declaration; in this case it is called a libel. The Government in this case is called the libelant, the person that brings the action, the libelant. The claimant in this case, represented by Mr. Batchelder, and his associate, is called the claimant. That is the person that represents the article against which the libelant proceeds for condemnation.

So, if you find against the tomato pulp, that is, that it is composed in whole or in part of decomposed or filthy vegetable substance, the form of your verdict will be, "We, the jury, find the issues for the libelant." If you find for the tomato pulp, that is, that it is not composed in whole or in part of filthy or decomposed vegetable substance, the form of your verdict will be, "We, the jury, find the issues for the claimant." That means for the pulp.

You may retire, gentlemen.

The jury thereupon retired and after due deliberation returned a verdict favorable to the Government on January 20, 1917, and on January 22, 1917, the claimant company filed its motion for a new trial, which said motion, on February 9, 1917, was overruled, and a formal decree of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that said claimant company should pay the costs of the proceeding.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5528. Adulteration of oysters. U. S. * * * v. 100 Cans of Oysters. Product destroyed upon stipulation of parties. Judgment for costs against claimant entered. (F. & D. No. 7047. I. S. Nos. 2528–l, 2529–l, 2530–l, 2531–l. S. No. E–477.)

On November 5, 1915, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cans of oysters, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the article had been delivered for shipment from the State of Connecticut to another State or Territory, on or about November 6, (?) 1915, by John P. McNeil, New Haven, Conn., and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, or putrid animal substance.

On March 2, 1916, the product was destroyed upon a stipulation of the parties without any prejudice to the rights of the said John P. McNeil, claimant, New Haven, Conn., to defend or make any claims which he otherwise might have made. Thereafter, on March 5, 1917, default for want of pleadings having been entered, judgment was entered to recover costs from said claimant.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5529. Adulteration of oysters. U. S. * * * v. 100 Cans of Oysters. Product destroyed upon stipulation of parties. Judgment for costs against claimant entered. (F. & D. No. 7048. I. S. Nos. 2532–l, 2533–l, 2534–l, 2535–l. S. No. E–478.)

On November 5, 1915, the United States attorney for the District of Connecticut, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cans of oysters, remaining unsold in the original unbroken packages at New Haven, Conn., alleging that the article had been delivered for shipment from the State of Connecticut to another State or Territory, on or about November 6, (?) 1915, by the Frank T. Lane Co., New Haven, Conn., and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, or putrid animal substance.

On March 2, 1916, the product was destroyed upon a stipulation of the parties without any predjudice to the rights of the said Frank T. Lane Co., claimant, to defend or make any claims which it otherwise might have made. Thereafter, on March 5, 1917, default for want of pleadings having been entered, judgment was entered to recover costs from said claimant company.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5530. Misbranding of "Constitution Water." U. S. * * * v. Stephen Demby. Plea of guilty. Fine, $2. (F. & D. No. 7053. I. S. No. 1327-m.)

On May 10, 1917, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Stephen Demby, New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on July 10, 1916, from the State of New York into the State of Massachusetts, of a quantity of an article labeled in part, "Constitution Water," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted essentially of a hydroalcoholic solution of iron acetate or chlorid, or both, glycerin, strychnine, and small amounts of aluminum and magnesium sulphates.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements, appearing on the labels of the bottles and cartons, and included in the circular accompanying the article, falsely and fraudulently represented it as a remedy and cure for diabetes, gravel, bleeding piles, diseases of the kidneys and bladder, inflammation of the kidneys, stone in the bladder, and female complaints, whereas, in fact and in truth, it was not.

On May 14, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $2.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5531. Misbranding of cottonseed feed. U. S. * * * v. Southern Cotton Oil Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 7057. I. S. No. 2722-m.)

On May 7, 1917, the United States attorney for the Northern District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Southern Cotton Oil Co., a corporation, doing business at Decatur, Ala., alleging shipment by said company, in violation of the Food and Drugs Act, on or about October 26, 1916, from the State of Alabama into the State of North Carolina, of a quantity of an article labeled in part, "Cotton Seed Feed Manufactured by The Southern Cotton Oil Company. Decatur, Ala.," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed 31.64 per cent of protein.

Misbranding of the article was alleged in the information for the reason that the statement appearing on the tags attached to the sacks, regarding the article and the ingredients and substances contained therein, to wit, "Protein 36.00," was false and misleading in that it represented to purchasers that the article contained not less than 36 per cent of protein; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it contained not less than 36 per cent of protein, whereas, in truth and in fact, it contained less than 36 per cent of protein.

On May 26, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5532. Misbranding of high protein tankage meat residue feed and Sulzberger's meat scraps. U. S. * * * v. Sulzberger & Sons Co., a corporation. Plea of guilty. Fine, $200. (F. & D. No. 7138. I. S. Nos. 13527–k, 13531–k.)

On March 23, 1916, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Sulzberger & Sons Co., a corporation, doing business at Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 21, 1915, and March 11, 1915, from the State of Illinois into the State of Indiana, of quantities of articles labeled in part: "High Protein Tankage Meat Residue Feed" and "Sulzberger's Meat Scraps," which were misbranded.

Analysis of a sample of the high protein tankage meat residue feed by the Bureau of Chemistry of this department showed 49.8 per cent of protein.

Misbranding of the article was alleged in substance in the information for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Guaranteed Analysis Pure Protein 60%," was false and misleading in that it indicated to purchasers thereof that said article contained 60 per cent protein; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that said article contained 60 per cent of pure protein, when, in truth and in fact, it did not, but contained a less amount thereof, to wit, 49.8 per cent protein.

Analysis of a sample of the meat scraps by the said Bureau of Chemistry showed 2.16 per cent of crude fiber and 42.0 per cent of protein.

Misbranding of this article was alleged for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Guaranteed Analysis Protein 50% * * * Crude Fiber (Maximum) 1% * * *," was false and misleading in that it indicated to purchasers thereof that said article contained 50 per cent of protein and not more than 1 per cent of crude fiber; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it contained 50 per cent of protein and not more than 1 per cent of crude fiber, when, in truth and in fact, it did not contain 50 per cent of protein and contained more than 1 per cent of crude fiber.

On March 17, 1917, the defendant company entered a plea of guilty to the information, and on April 9, 1917, the court imposed a fine of $200.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5533. Adulteration of tomato pulp. U. S. * * * v. 50 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7157. I. S. No. 10930-l. S. No. C-419.)

On January 15, 1916, the United States attorney for the Middle District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 50 cases of tomato pulp, remaining unsold in the original unbroken packages at Montgomery, Ala., alleging that the article had been shipped on December 1, 1915, by A. E. Kidwell & Co., Baltimore, Md., and transported from the State of Maryland into the State of Alabama, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Ruxton Brand Tomato Pulp made from tomatoes and tomato trimmings. * * * Mantik Packing Company, Highlandtown, Md."

Adulteration of the article was alleged in the libel for the reason that it contained a partially decomposed vegetable product.

On April 25, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5534. Adulteration of tomato pulp. U. S. * * * v. 25 Cases of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7162. I. S. No. 10934–l. S. No. C–422.)

On January 20, 1916, the United States attorney for the Middle District of Alabama, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases of tomato pulp, remaining unsold in the original unbroken packages at Montgomery, Ala., alleging that the article had been shipped on December 1, 1915, by A. E. Kidwell & Co., Baltimore, Md., and transported from the State of Maryland into the State of Alabama, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Hartlove Brand Tomato Pulp. Made from pieces of tomatoes and trimmings. * * * Packed by Hartlove Packing Co., Baltimore, Md."

Adulteration of the article was alleged in the libel for the reason that it contained a partially decomposed vegetable product.

On April 25, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5535. Misbranding of "Pulmonol." U. S. * * * v. Pulmonol Chemical Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $25. (F. & D. No. 7185. I. S. Nos. 1355-h, 7266-h.)

On July 17, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Pulmonol Chemical Co., a corporation, doing business at Brooklyn, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about October 4, 1913, and March 21, 1914, from the State of New York into the States of Massachusetts and Minnesota, respectively, of quantities of an article labeled in part, "Pulmonol," which was misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it was essentially a solution in glycerol and water of sodium benzoate, potassium, guaiacol sulphonate (thiocol), and a little strychnine, and colored with amaranth, a coal-tar dye.

It was alleged in substance in the information that the article in each shipment was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for all pulmonary diseases and all forms of consumption, and as effective for improving nutrition and relieving night sweats, when, in truth and in fact, it was not. It was further alleged in substance that the article was misbranded for the reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as effective for preventing hemorrhages and breaking up all severe colds, as a cure for consumption and tuberculosis, and as a remedy for night sweats, when, in truth and in fact, it was not.

On February 8, 1917, the case came on for trial before the court and a jury, and after the submission of evidence and arguments by counsel the following charge was delivered to the jury on February 10, 1917, by the court (Chatfield, *J.*):

I think that the present case is in many ways one of the most serious and one of the most important matters which I have ever been called upon to submit to a jury. In the ordinary criminal case the question is whether one individual should be held to have been shown beyond a reasonable doubt to have violated something which Congress has said should constitute a crime, and the personal liberty or liability to a fine of that individual is the limit of risk in the particular case. In so far as the case may establish a doctrine, or in so far as the case may form an example, it may be used or not used—as the case may be disposed of if it is appealed or as Congress may legislate upon a matter of the same sort—when another case comes up. When a statute is passed it is made the law of the country, on which the act of one individual may be in a sense the test as to whether or not the opinion of a great many people or of a few people is correct, when the application of that test may mean the life or death, the health or sickness, of many people, and when you have the position of one man protesting for his ideas against the general opinion of those who are supposed to know about the subject. When a jury of 12 men are called upon to consider whether or not the ideas of the man as against everyone else, or nearly everyone else, are correct, or when the jury finds itself in a position of considering whether or not the opinion of the world up to the present time is correct, you have a very serious subject to consider, and the court has a very serious duty in deciding just how the matter shall be left to you and just what shall be left to you.

Now the Supreme Court of the United States, in the case from which the district attorney has just read to you, said, that it had been decided in other cases that Congress by this statute deliberately excluded the field where there are honest differences of opinion between schools and practitioners. It said that the statute did not intend to invade the domain of speculation. The Supreme Court has held in other cases that this statute, that the laws of the United States, do not attempt to decide whether or not a belief of one person or the belief of many persons is right, and that those laws do not bring up such a test in these criminal statutes. If I may use a plain illustration,

I think if at the time that the whole world believed in witchcraft one person should have advertised something that contradicted the doctrine of witchcraft, the United States Government under the Constitution and under its method of enacting law as it exists at the present time would not allow a person's liberty to be brought into jeopardy under a criminal statute by the mere decision as to whether or not witchcraft was true or false. That comes in the domain of freedom of opinion or of belief. I am inverting the case because now everyone believes that witchcraft does not exist, and no person perhaps could be found that would oppose that idea.

In the case at bar it is the opinion apparently of the medical world generally, and of most individuals, so far as they have gained their ideas from doctors and from the investigation of the doctor's statements that have been made—it is the idea of the world that tuberculosis, as has been stated, is a disease that comes from the presence of a germ or bacillus that is substantially always present and which may progress if circumstances give it the opportunity. Now, you have heard that it is not the general opinion that any particular medicine can keep away or remove this opportunity for these germs to develop in the lungs (because we are not talking about joint tuberculosis and other matters of that sort). You have heard from the testimony that if, according to the general opinion of doctors, after these germs have started their development and have proceeded upon this awful course that Mr. France has tried to explain to you, which I am not even going to try to follow, if they have gotten to the point where a person would say that one lung was gone, whatever that means, then the general impression and opinion as indicated by the testimony of the witnesses, and what has been stated to you, of the world to-day is that no medicine will either stop the going of the lung or bring the lung back from where it has gone, but that, as has been said, these germs may be stopped, that is arrested and stay inert or dead, whatever it may be, by certain treatment that removes their opportunity to continue active. Now, when you are considering whether generally everybody is right and that the medicine does not actually do the arresting (and I think that Dr. Payne told you from his standpoint the medicine itself does not act like a policeman and cause this arrest), when you consider that, and then attempt to determine who is right in forming an opinion and reaching a conclusion as to just what medicine may have to do with the conditions which will be present if fresh air and the proper amount of exercise, and the proper number of eggs and other food are taken—when you are considering just what medicine will have to do with the creation of these conditions, and just what medicine will not have to do with the creation of these conditions, and attempt to say whether one doctor is right in saying that you should have two eggs, whether another doctor is right in saying that you should have no eggs, whether one doctor is right in saying you should have no medicine, and whether the other doctor is right in saying that you should have pulmonol with those things—these matters have nothing whatever to do with this case.

This is not a case in any sense where the practice of using pulmonol is in question. It is in no sense a case whether the Pulmonol Company should sell pulmonol. It is in no sense a question whether Dr. Payne should continue to prescribe pulmonol. We have nothing to do with whether he may convert everybody to his opinion. I can say to you, as a matter of law, that if Dr. Payne is right, we should help him convert people to that opinion; that if he is right, and it is a matter of opinion, the whole world should agree with him. So, I have let him put in the testimony. I have let him state these cases to you so that you should see that, viewing the facts and viewing the patients and viewing the situation, looking at it from Dr. Knopf's standpoint, looking at it from Dr. Payne's standpoint, there is a difference of opinion, as to which the two men may be as honest in their variances as may be and they may each believe absolutely that the other is entirely wrong. I do not mean entirely wrong, because they agree on some of the conditions, but I mean, wrong in saying that the other is on the wrong track. We can leave that all out of the case, but it was necessary to let that testimony in, to allow this situation to get before you so that you gentlemen, as jurors, would not be disposing of this case on a question of opinion as to whether pulmonol may be a good medicine or not. So, as the Supreme Court has said, Congress recognizes that they would not decide between one form of religion and another, as to which may be the best assistance to the doctor in administering medicine. It would not make any difference as to whether, so far as Congress was concerned, the man's wife is a Christian Scientist, or whether the man's wife is a Roman Catholic, or a Presbyterian, or a Jew, so far as his mental make-up is concerned. If he takes a dose of Epsom

salts his mental attitude may have something to do with the situation. The doctor told you there was a psychology in this, and if the man would have greater psychology if he goes to one church and thinks of it one way and have less psychology and just as much of Epsom salts if he went to another church, you as jurors can leave that out, because Congress has left it out and it is not in the statute. Congress, as the Supreme Court says, used the words in order to leave no doubt upon that matter, that the statement must be false and fraudulent. In other words, there must be intent to deceive people so as to make them engage in commerce—that is, spend money or the equivalent of money—because they are misled and deceived, and that brings me to this statute itself and to what this case is about.

Perhaps some of you were here in some of these other cases that had to do with foods. Some of you may have been here in ordinary negligence cases where you heard something about the regulation of interstate commerce. But bear in mind that this is a criminal charge. At the outset this paper, which has been called an information—you can see that there is much paper in it. It costs more than one sheet would, as you can see, and the price of that paper might cost more today than it did a month ago, but that has nothing to do with this case—that information is merely a sheet of paper which notified the Pulmonol Company that they were to be here, because a jury was going to listen to their case; and they are here and you are hearing the case, and you must judge the case only from the evidence that has gone to you in the case, using your intelligence and the knowledge that you have gained throughout your lives in passing upon that evidence. So the Government must present evidence or else, of course, there would not be any case. The Government must show what will satisfy you beyond reasonable doubt that the defendant has done what it charges or else you can not get to the point where you could render a verdict for the Government, and therefore, of course, I charge you that as this is a criminal matter that you must weigh everything that has been said so as to see if it was proven beyond reasonable doubt that the defendant did that with which it is charged and which I shall specifically in a moment state. You have heard what does not ordinarily happen in a case. You have heard a good many more witnesses for the defendant than for the Government in this particular matter. You must take into account not how many there were or how fast each one talked nor how many words they said, but take into account what they said which is material to the issue in the case. Consider how they said it, who they are, what relation they have either to the result of the case, or to the subject matter, and use all that as light, just as you use their appearance and their intelligence and the way of saying things to throw light upon your minds in determining how much you believe, in order to decide of what you are satisfied as to all the facts as to the different things, and then see if those facts, that you find from the testimony, prove beyond reasonable doubt that the charge is made out.

This corporation, so far as we know anything about it, is supposed to be reputable. Its connection, you have heard, with the Salvation Army; that may be considered by you as something in their favor, as to honesty in their intentions, and, so far as you know anything about this company, consider whether their intent is to defraud. Doctor Payne has testified. He has told you he is the president; he has told you he is the medical officer; he has told you he is the salesman; he has told you that he does everything that is necessary for the company and therefore he has given you a chance to judge of the company's intent and its dealings in so far as he might advertise the drug of this company or the merits it had. So from that you can determine these questions of fact as to what their purpose, their knowledge, and the meaning of their acts are. And so you come down in this case to a determination not as to whether pulmonol is a good medicine, not to a determination as to whether one person is right in thinking that it will cure consumption, not to a determination as to whether other people are right in thinking that it has no effect upon pulmonary consumption, or that it has no effect as a tonic. You come down to a determination in no way of whether or not fresh air and treatment, without medicine, is the only specific. But assuming that people generally and the public who buy medicine have been of the impression that tuberculosis is to be treated only by fresh air and change of climate and food and care, then if a remedy is presented which it is said will cure tuberculosis, and if that remedy is sold to them, and if they are thereby induced to purchase the remedy, you have to consider whether or not the statements upon the bottle and upon the papers in the package in which it is sold, in the first place, accord-

ing to one paragraph of the statute, whether the package or label bears any statement, design, or device regarding such article or the ingredients or substances contained therein which is false or misleading in any particular.

Now, this statute, as I have said, was passed by Congress because they have the power to provide police regulations as to the way in which goods shall be sent from one State to another. As to how one State shall deal with another in a commercial way, Congress has the power to decide what is good; that is, what will have a beneficial effect in this matter of police regulation upon the people of one State when they are dealing with the people of another, in the sense of regulating the goods that they may exchange. So that Congress can stop the transmission of opium from one State to another, if Congress reaches that conclusion. That is a police regulation. So Congress may legislate that liquor shall be stopped in interstate traffic. Congress has the power to say that pulmonol shall not be shipped from one State to another, if Congress reaches the conclusion that pulmonol shall be prohibited in its statute. But these statutes have not gotten down to that refinement. This general statute says that no food product and no drug shall be sent from one State to another which bears upon it a false label, or a label that is misleading as to matters of fact, as distinguished from those purely of opinion, where it is made plain that it is opinion. You have heard them talk about codeine and derivatives of opium. If a medicine contains those derivatives and they are not stated, or if the preparation is incorrectly stated so that the label is misleading, then Congress says that this shall not be sent from one State to another because those who purchase it would not know what they are buying. So under this first main section of the statute this defendant is charged with having on these two occasions, which are admitted, sent from the State of New York to another State packages of pulmonol that bear this language, which has been read to you, and the Government charges that some of those statements in there are false and misleading as facts as distinguished from opinion.

At the time when this law was passed, in 1912, apparently there was some necessity that came into the view of Congress for stopping the traffic in drugs where the statement on the label was not false as to the contents of the package, or not false as to what the package was or meant to be, but where the statements were false as to the effect of the package generally. The idea that Congress was considering was what is popularly known as the sale of patent medicines, or put-up drugs, as a matter of business where people buy them without knowing what they are. To come back to the illustration of liquor again. If an article was put out as a medicine and there was a statement that it would cure certain diseases, and if in fact it was a beverage which was furnished to people so that they thought it was a medicine, so that they either did not know it was a beverage or that they did not recognize its effect, and if that article could be shown to be sold because people would buy it to drink, and if it could be shown that it had no medicinal effect, then that article would come within the prohibition of this statute. Now, we might come to a long discussion as to whether alcohol and medicine had any medicinal effect. We will not discuss now whether a person might be charged with having misbranded an article because he said it contained 15 per cent of alcohol and the alcohol would help cure a cold, or a thirst, whichever it might be. That would be a matter of opinion. But if he stated that alcohol was a cure for baldness, or if he stated that the bottle of something or other was a cure for baldness, and all it proved to be was that it was good for drink, then it could be stopped under this statute.

Now, I am using illustrations that do not come very close perhaps to this, but I do not want to come too close, because I am going to leave the question to you. The question is what the effect of this particular article may be as viewed from the statement of facts, distinguished from those of opinion. So in 1912 Congress, in order to reach the kind of cases that I have referred to, added the section that said if the label contained anything which was false or misleading—in fact that was already in the statute—and added this: If the package or label shall bear or contain any statement, design, or device regarding the curative or therapeutic power of such article, or any of the ingredients or substances contained therein, and if that statement is false and fraudulent, then it would be treated as constituting a crime, in the same way as before, when the statute said "if it contained misstatements of fact." So that we have here a change, of course. If you find it proven beyond reasonable doubt that this label contains in it any statement of fact (as distinguished from a statement of opinion, or as distinguished from a statement of conclusion as

to the recovery of a patient) which is false, then it would be within the main part of the statute. Then, if you should find that the label contains any statement as to the curative or therapeutic effect—from our standpoint therapeutic and curative are substantially the same—and if that statement is not only false; that is, if you find it is not based on fact, but if the persons who made the statement knew or should have known or must have known that the statement was false, and if they put that there for the sake of giving out a false statement and of making a statement to people which would cause them to buy something because they did not know the truth, then that would come within the second portion of the law, and if the Government proves that beyond reasonable doubt, your verdict should be guilty.

Now, this case, as has been said, is not a test as to whether or not the Pulmonol Company can do business or whether it can sell this medicine. It really is only a test as to whether or not the particular label that is upon the medicine at the present time is misleading and intentionally false and fraudulent, and whether it contains statements that are contrary to fact. If so, then, if proven beyond reasonable doubt that this was so, the defendant would be liable to the penalty of having to correct its label so that no one would be misled in that respect, and be punished in such a way as the court might see fit, according to the amount of intent in the misstatements that the package contained. It is for that purpose that Dr. Payne was notified by the Department to tell them what he knew about the contents of the article and the accuracy of the statements upon the article. If there had been a provision there that the liquid in that bottle was red, white, and blue in color, and it proved to be all red, and Dr. Payne had gone down there and they had said, "Why do you say it is red, white, and blue?" and he said, "Well, it is. When you mix it, it is first white, and then blue, and then red. I did not intend to give the impression that it was red, white, and blue all at once," the Government would have said, "Well, you should say it is first white, and then blue, and then red, and as long as it is red it is in a condition in which people can take it." He could have rebranded his label in that respect and the Government would consider whether or not the company should be prosecuted for the use of the previous label, or whether it was something that did not necessarily mean that a person should be charged criminally with having put out something that is fraudulent. So, in that way this matter was called into discussion. The situation behind it, as to this disagreement between Dr. Payne and the other doctors, as to his standing in this society which is formed by physicians, and in which they attempt to regulate or control the action of those who are practicing as doctors, let us entirely leave out. The question whether you agree with them, or disagree with them, their methods, or their actions in dealing with some one who runs counter to their ideas, has nothing to do with this case, unless it affects the credibility of one of the witnesses, or unless it shows interest or bias on the part of one of the witnesses so that his statements here are not to be taken for their face value. You jurymen can weigh all those things so as to see whether a man is so certain that a person is a wrongdoer that he would not listen to anything properly that might be said in the man's favor or might be true when said about a man. On the other hand, a man who is being criticized may feel that the others were wrong to such an extent that he will not entirely give full consideration to what a third party may be doing without having the slightest interest in the difficulties between the first two.

So far as the Government is concerned, you may start with the assumption that the district attorney, and in this case the Government, in presenting this question leaves to you in no way an opportunity or idea of siding with the other doctors or with Dr. Payne. That has nothing whatever to do with the issue. Whether the Department of Agriculture learned Dr. Payne's analysis and suggested to the chemists that they look it over and see if they could find something they had not found before has nothing whatever to do with whether or not the statement on the label is all right; it only has to do with whether or not the chemists followed that suggestion. You have nothing to do with the question whether the officers of the Government may have been attempting to help the other doctors and hurt Dr. Payne (you can assume that they have been so misguided and blinded that they are not fair to one set or the other); but the thing for you to consider is whether or not their accuracy of observation in their analysis of the product is correct, as you have heard all the testimony, and then consider whether their analysis is correct. They have told you what is in the product. Then see whether this label contains

anything that is false, that is, in the sense of inaccuracy or misstatement as to what the medicine is made of or as to what it is. For instance, if it said it was a solid and not a liquid you could pass on that as a question of fact. If it said that it was beneficial in certain diseases, and the bottle was empty, you could pass on it as to whether it would be beneficial to take nothing where they said you must take something. If it were proven that the bottle contained merely water and they told you that the patient must take something, why then (unless they could tell you that this psychology entered in so that if they took sugar instead of medicine and the sugar was coated with pink, it would be healthful merely because the patient thought they were getting something) then you could take into account that the statement would be false, when it claimed that the medicine was healthful; but, if the statement is that this pink-coated sugar contains quinine, and it does not contain it, then you have a question of fact.

You have got to be very careful all the way through here to dispose on one side of all the matters of opinion and on the other side of all questions of fact. Dr. Knopf has gone through this label and in response to my question has taken up clause by clause the different statements of what is in the medicine and of its action. In most respects, perhaps in all respects, as he said, the sentences as composed of words in the English language and as stating something with relation to the contents or to matters that are used as medicine, are true. He differs when he gets to the proposition that this particular medicine is of any effect as a medicine in tuberculosis cases, and there is a question of fact for you. If the medicine has no effect and if it is sold merely because people are anxious to buy a remedy, and if they deceive themselves into thinking that remedy is doing them good (even if they thereby help themselves); or if the remedy, because they take care of themselves, does not have any effect of itself; in other words, if it is just the same as if there was so much water in the bottle and if it was sold with the intent of making people pay for water, that is, pay for an inert substance and induces them to exercise the phychology of curing themselves, and if this label you find contains a statement of a cure that does not cure as a matter of fact, with the understanding that people would get in buying it, why then the label is false and misleading, and you would consider whether you are satisfied beyond reasonable doubt that under this third section of the statute it was intentionally made false and misleading in that way.

Now, the information has two counts, one relating to the package that was sent to Boston, Mass., on or about October 4, 1913, and the other which was sent to St. Paul, Minn., on or about March 1, 1914. Of course, as I have already charged you, it would be interstate commerce to sell a bottle of medicine to some one in either Boston or St. Paul, to send it from Brooklyn to comply with the sale. There is no dispute as to the language that is upon the packages because they have been submitted to you. The counts have not been separated into a charge as to whether this is intentionally false and fraudulent as to distinguish it from merely misleading or false. In fact I have tried to distinguish that by telling you that if the Government satisfies you beyond reasonable doubt that the intent was to put out something that was false and misleading with the idea of deceiving for the purpose of disposing of it as an article of use, not necessarily of sale, then, of course, the matter would come within the language of the information. If you find that there was no intentional fraud, no intentional presentation of a false statement, and if you should still find that the language upon the package was false and misleading as to facts as distinguished from opinion, it would still come within the language of the statute. If the Government should satisfy you as to that beyond reasonable doubt, the charge would still be made out in that sense. And as I told you, it is all a question of whether you find as a fact one or two of these matters. One, that this label was intentionally false and fraudulent and sent out for the purpose of deceiving, as distinguished from an honest belief that it was helpful and that the statements made were true. The other point is, if you find that the statements upon the paper itself state as facts what is not so in any material sense or particular, according as you determine those questions (of course, recognizing the proposition that if any witness willfully deceives you here within the court room, it is within your power to pay so much attention to what he says as you see fit, weighing all the testimony) then see if the precise charge under this information is proven beyond reasonable doubt, and do not speculate upon these matters of medical science; do not determine

for yourselves whether or not you want to buy this medicine or have somebody use it, or whether you would try it as a last resort. Keep that out of the case. Simply see whether the defendant has done something that brings it within this statute and whether that is shown beyond reasonable doubt.

The Government requests me to charge:

(1) It is unnecessary for the Government to prove that all the statements on the label or booklet or circular were false and fraudulent. If you believe from the evidence that any one statement as to the curative or therapeutic properties of this compound was false in fact and that the defendant knew that it was false, then you may find the defendant guilty. I so charge.

(2) If you believe from the evidence that as to any one of the ailments for which this compound is recommended by the label or booklet or circular and which is set forth in the information this compound would have no beneficial effect whatever, and the defendant knew this, you may find the defendant guilty. In the way that I have defined fraud I do charge that yes. If the defendant sent these out knowing that he was making a false statement, that would be a fraud.

(3) If you believe from the evidence that any one of the therapeutic claims as to the effect of this compound upon all pulmonary diseases, for all forms of consumption, for hemorrhages or for night sweats, was false and was made by the defendant with a reckless and wanton disregard as to whether it was true or false, you may find the defendant guilty. I so charge.

(4) If you believe from the evidence that any one of the therapeutic statements upon the label or booklet or circular as set forth in the information was partly true, but was so artfully worded as to convey a meaning as to the compound's therapeutic properties which was wholly false, and that the label and booklet and circular was so worded for the purpose of deceiving the public, then that statement would be false and fraudulent, and you may find the defendant guilty. I so charge. If this paper or label was made up in such a way that people would get the idea of false facts as distinguished from either a correct or incorrect opinion of the person making the statement, if that paper was gotten up so as to present false facts to people or to make them believe things were false as facts as you find them, and if sold and put on the market for the purpose of selling by means of false statements of facts, that would bring it within the section.

Now, Dr. Payne, if you think that I have stated the matter incorrectly from either standpoint of the law or of the testimony, you want to get it on the record now.

Dr. PAYNE. I have nothing to say.

The jury thereupon retired and after due deliberation returned a verdict of guilty, and on March 26, 1917, the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5536. Misbranding of "Tweed's Liniment." U. S. * * * v. William L. Davis (manager of the Tweed Liniment Co.). Plea of nolo contendere. Fine, $10. (F. & D. No. 7279. I. S. No. 82–k.)

On July 11, 1916, the United States attorney for the District of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William L. Davis, manager of the Tweed Liniment Co., Chelsea, Mass., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about November 20, 1914, from the State of Massachusetts into the State of Maryland, of a quantity of an article labeled in part, "Tweed's Liniment," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was essentially a hydroalcoholic solution of chloroform, ammonia, turpentine, sassafras oil, a thujone, containing oil such as thuja oil and fixed oils.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a sure cure for rheumatism, neuralgia, stiff joints, swollen joints, headache, burns, scalds, sprains, swellings, bunions, contracted cords, eruptions, sore throat, and everything that an external remedy can be applied to, and as a remedy for diphtheria, when, in truth and in fact, it was not.

On April 24, 1917, the defendant entered a plea of nolo contendere to the information, and the court imposed a fine of $10.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5537. Misbranding of "Ka-Ton-Ka." U. S. * * * v. Oregon Indian Medicine Co., a corporation. Plea of nolo contendere. Fine, $200 and costs. (F. & D. No. 7285. I. S. No. 3591-k.)

On October 23, 1916, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Oregon Indian Medicine Co., a corporation, Corry, Pa., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about May 6, 1915, from the State of Pennsylvania into the State of New York, of a quantity of an article labeled in part, "Ka-Ton-Ka," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was essentially a preparation containing alcohol, sugar, aloes, and sodium bicarbonate.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it as effective as a blood medicine in the treatment of all kidney and liver complaints, erysipelas, female troubles, fever and ague, rheumatism, dyspepsia, catarrh, scrofula, blood poison, syphilis, and malaria, and as a remedy for all blood diseases, salt rheum, enlargement of the liver, and diseases of the kidneys, when, in truth and in fact, it was not. Misbranding was alleged in substance for the further reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as a treatment and cure for blood, liver, stomach, and kidney disorders, and effective as a blood purifier, and as a remedy and a certain and sure cure for, and as effective to correct, all diseases of the stomach, liver, kidneys, and the blood, and as a remedy for jaundice, poverty of blood, irregular menstruation, sleeplessness, indigestion, shortness of breath, pain in the side, and backache, when, in truth and in fact, it was not.

On March 21, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $200 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5538. Misbranding of "Compound Prickly Ash Bitters." U. S. * * * v. Prickly Ash Bitters Co., a corporation. Plea of guilty. Fine, $20 and costs. (F. & D. No. 7289. I. S. Nos. 11050–l, 11154–l.)

On September 20, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Prickly Ash Bitters Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about December 8, 1915, and November 23, 1915, from the State of Missouri into the States of Texas and Louisiana, respectively, of quantities of an article labeled in part, "Dr. B. F. Sherman's Compound Prickly Ash Bitters * * *," which was misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that it was essentially a hydroalcoholic solution containing sodium acetate, emodin-bearing drugs, capsicum, aromatics, and plant extractives; buchu indicated.

It was alleged in substance in the information that the article in the shipment on December 8, 1915, was misbranded for the reason that certain statements appearing on the labels of the bottles and cartons falsely and fraudulently represented it is a remedy for gallstones, retention or suppression of urine, as a treatment for inflammation of the kidneys and diabetes, as a remedy for indigestion, dyspepsia, and hepatitis, and as a preventive of the dangerous diseases that attack the kidneys, when, in truth and in fact, it was not.

It was alleged in substance that the article in the shipment on November 23, 1915, was misbranded for the reason that certain statements appearing on the labels of the bottles and cartons falsely and fraudulently represented it as a preventive of the dangerous diseases that attack the kidneys, as a remedy for gallstones, incontinence of urine, retention or suppression of urine, difficulty in passing urine, pains in back and loins, headache, diabetes, leucorrhea (whites), and irregular periods, indigeston, dyspepsia, and hepatitis, and as a remedy and treatment for inflammation of the kidneys and diabetes, when, in truth and in fact, it was not.

On May 7, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20 and costs.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5539. Adulteration and misbranding of vinegar. U. S. * * * v. 20 Barrels * * * Acme Brand Apple Vinegar * * *. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7303. I. S. No. 11458–l. S. No. C–467.)

On April 15, 1916, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 barrels Acme Brand apple vinegar, remaining unsold in the original unbroken packages at Ottumwa, Iowa, alleging that the article had been shipped on or about March 7, 1916, by the Gist-Leo Vinegar Co., Springfield, Mo., and transported from the State of Missouri into the State of Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that distilled vinegar or dilute acetic acid had been mixed and packed therewith so as to reduce or lower its quality or strength, and had been substituted in part for the article.

Misbranding was alleged in substance for the reason that the article was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, "Apple Vinegar;" and for the further reason that it was labeled "Apple Vinegar," so as to deceive and mislead the purchaser into the belief that it was cider vinegar, when, in truth and in fact, it was not.

On March 15, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5540. Adulteration of beans with tomato sauce. U. S. * * * v. 200 Cases * * * Mamma's Choice Brand Baked Beans with Tomato Sauce. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 7359. I. S. No. 11472–1. S. No. C–498.)

On May 2, 1916, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases, each containing 2 dozen cans of Mamma's Choice Brand baked beans with tomato sauce, remaining unsold in the original unbroken packages at Ottumwa, Iowa, alleging that the article had been shipped on or about January 20, 1916, by the Norfolk Packing Co., Norfolk, Nebr., and transported from the State of Nebraska into the State of Iowa, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a decomposed vegetable substance unfit for food.

On March 16, 1917, the said Norfolk Packing Co., a corporation, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the cans of beans should be opened, cleaned, repicked, recanned, and reprocessed under the supervision of a representative of this department, the decomposed and partly decomposed beans to be removed from the product and destroyed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

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5541. Adulteration of pork and beans. U. S. * * * v. 425 Cases * * * Mamma's Choice Brand Pork and Beans with Tomato Sauce * * *. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 7362. I. S. No. 11471-1. S. No. C-501.)

On or about May 2, 1916, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 425 cases, each containing 2 dozen cans of Mamma's Choice Brand pork and beans with tomato sauce, remaining unsold in the original unbroken packages at Ottumwa, Iowa, alleging that the article had been shipped on or about January 20, 1916, by the Norfolk Packing Co., Norfolk, Nebr., and transported from the State of Nebraska into the State of Iowa, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a decomposed vegetable substance unfit for food.

On March 16, 1917, the said Norfolk Packing Co., a corporation, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the cans of beans should be opened, cleaned, repicked, recanned, and reprocessed under the supervision of a representative of this department, the decomposed and partly decomposed beans to be removed from the product and destroyed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5542. Misbranding of vodka for Passover * * *. U. S. * * * v. Russian Monopol Co., a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $199. (F. & D. No. 7381. I. S. No. 8268-h.)

On July 17, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Russian Monopol Co., a corporation, Brooklyn, N. Y., alleging the sale by said company, in violation of the Food and Drugs Act, on or about February 25, 1914, under a guaranty that the article was not misbranded within the meaning of the said act, of a quantity of an article labeled in part, "Vodka for Passover," which was a misbranded article within the meaning of the said act, and which said article, in the identical condition in which it was received, was shipped by the purchaser thereof, on or about March 4, 1915 [1914], from the State of New York into the State of Pennsylvania, in further violation of the said act.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results, expressed as grams per 100 liters to 100 proof unless otherwise indicated:

Proof (degrees)	147.2
Volatile acid, as acetic	3.3
Total acid, as acetic	4.1
Fixed acid, as acetic	0.8
Esters, as acetic	1.2
Aldehydes, as acetic	3.6
Furfural	0.5
Fusel oil	90.9

Odor: Resembles rum.

Taste: Very strong of alcohol and resembles rum.

The results of analysis show the product to be other than true Russian vodka.

Misbranding of the article was alleged in substance in the information for the reason that the following statements appearing on the labels, regarding the article and the ingredients and substances contained therein, to wit, (translation) "Vodka for Passover. * * * Under the supervision of the Rabbi Joseph Michel, of Vilna, overseer of the seals. * * * Vodka for Passover. Rectified. I come to make acquainted that during the time of my travelling from Boston, I turned over my duties of taking care of this vodka, which is made in Zurad, to my friend who is now Rabbi in Boston, and I have found out that he is a great, learned man, also full of knowledge," together with the general appearance of the label and other statements in the Russian and Hebrew languages, were false and misleading in that they indicated to purchasers thereof that the said article was imported vodka, produced in the Empire of Russia; for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was an imported vodka, produced in the Empire of Russia, when, in truth and in fact, it was not, but was a domestic product manufactured in the United States of America, to wit, Borough of Brooklyn, City of New York, State of New York; and for the further reason that the article was a domestic product and had been manufactured in the United States of America as aforesaid and purported to be a foreign product, to wit, a product of the Empire of Russia.

On January 15, 1917, the case came on for trial before the court and a jury, and after the submission of evidence and arguments by counsel, the following charge was delivered to the jury on January 19, 1917, by the court (Chatfield, *D. J.*):

Gentlemen of the jury, I am going to be very brief as to some of these matters and explain more in detail only those which are actually questioned.

In the first place, this is a criminal case; that is, the Government has seen fit to bring this corporation into court, charging that it has violated a statute, and that immediately puts upon the Government the burden of satisfying a jury beyond a reasonable doubt as to every material matter that enters into the charge. So that you start with the proposition that there is nothing against the defendant except as you have heard the case here from the evidence. It is merely present in court, and the Government starts out to show what it charges against it, and presents that for you to listen to, and if they make out a case so as to show you beyond a reasonable doubt that the defendant broke the law in the sense I shall explain later to you, then, of course, your verdict would be guilty. If the Government does not prove the case to that extent, if you have a doubt in your minds as to whether the defendant broke the law in the sense we are to consider, if you can not determine the matter, or if it is evenly balanced in your minds, that means you do not reach the point where you can say they are guilty beyond a reasonable doubt, and in that case your verdict would be for the defendant.

So long as it is a corporation you can see you don't have to give thought to whether it was convicted before, or is of good reputation or bad. A corporation has to use men to do its work. Those men may be good men or bad men. They may be men who abide by the law, or law breakers, but that would not affect the corporation, unless the corporation did something which of itself broke the law. If any witness testifies, he submits himself to you. You can determine whether or not he is telling the truth. The test of all this evidence you have heard is whether, in your mind, it conveys certain facts that you find to be the truth, so that you take those facts and hold them in your memory, so as to use them in reaching this determination, or opinion, as to whether the Government makes out its case. You can see, in doing that, that you must scrutinize as carefully as you can—weigh as carefully as you can—the testimony of everyone who appears in the case. If he is connected with the Government, and his duties are such that it affects his opinion in some of these matters, take that into account, so as to scrutinize it with the idea of determining what you take as facts. When one of the men connected with the defendant testifies, you are to take into account that he is interested from the sense that the result of the case will indirectly affect him, and you have to judge what he says from the standpoint of his connection with the defendant and the standpoint of the way he testifies and what facts he tells you about himself. You can see by that that it is not the quantity of the testimony. There were more witnesses for the Government than the defendant, and yet, if the Government does not make out a case to the extent that I have told you, the number of witnesses does not make any difference.

What I have charged with respect to any corporation is, of course, the law with respect to this particular charge, and so, looking at the evidence—the testimony you have heard—weighing the statements of the witnesses from that standpoint, just fixing these facts so as to see what you do determine, do agree, and thereby arriving at matters which you may consult about together (because you can not reach a verdict until you go to your room and your twelve minds work one with the other so as to result in one verdict), then you will by that process of elimination get certain things which you start out with as the facts which you find, and then, from those, consider next what is the charge against this company, and then see whether the facts prove beyond a reasonable doubt that the charge is made out.

This pure food and drug law, of course, has purposes that in general I think everyone approves of. It is to benefit, or help, the public. It is to prevent the use of articles of food or of drugs that will do harm through the lack of information on the part of those who use something that they think is different from that which it actually is. We need not go into all those possibilities.

In the case of foods, it is intended to do two things; one, to enable the persons to get exactly what they think they are getting, and in the next place to prevent their getting something that may do them harm or may defraud them by making them pay an additional price, or will cause them to be cheated in the various ways that are defined in the statute, by covering up the sale of one thing in place of that which the article purports to be.

In these particular sections we have to do with there are in general two propositions—one as to adulteration, and the other as to misbranding. In this particular case on trial we are concerned with misbranding

When the Government presented the case in court on this information they had three counts. They have withdrawn two of them because of the particular words on which the count was based, and we have one left, which refers to the same act, the same transactions, as those expressed in the other two, and so far as you gentlemen are concerned any one of the three counts would leave the same question to you because, in addition to the statement of it as presented in this paper which is on file, the matter has gone on and been heard upon the testimony, and you are to consider the case as presented from what you heard, not from the way the district attorney or some one in his office may have chosen the language that went into this particular paper.

In count 2, which is the one going before you, they have attempted to charge a case of misbranding. In addition to the fact that it has to do with the question of the sale and use of food products, I must call your attention to the way it gets into this court.

The Constitution gives Congress the right to make certain laws. You understand that the States, for instance, have the right to make police regulations as to a person's conduct (if he is going to commit a burglary or that sort of thing here in Brooklyn), and that the United States, under the Constitution, has the right to make such laws as those stating how a person coming from Vilna, Russia, would get into the United States. There is a definite marked boundary line between the laws that are within the States' jurisdiction and the laws that are applicable to the whole country, and one of those boundary lines is drawn with reference to what is State commerce; that is, business within the boundaries—as far as we are concerned—of New York State, and business that is interstate; that is, for instance, the acts of the people of New York who conduct business with people in some other State. When that happens, the business goes across the State line, and then the Constitution says the United States courts, which will apply the law according to the same standards and feelings in either State, will hear the case, or will have to do with the matter, instead of having the matter determined, perhaps, for a resident of New York by a court in New Jersey. So, where this interstate commerce, where the matters of business (products) are going from one State to the other, Congress has the right to make regulations and to provide for criminal provisions, criminal laws, criminal penalties, for the violation of those laws, so long as it is a regulation of the actual passage of the commercial articles from one State to the other, or the acts of parties who are sending the articles from one State to the other, and who thereby are taking part in something that the United States can control.

So this law was passed with reference to the regulation of food products and drugs, and the acts of persons who were dealing in food products and drugs which went from one State to the other, and intended to do that when they were put into commerce.

You can see that if this Russian Monopol Company was making vodka, that they knew was going to be drunk on the premises, or drunk in Brownsville, it would have nothing to do with commerce in New Jersey, Pennsylvania, Connecticut, or the rest of the world. It would not be interstate or foreign commerce. It could not get out of the State until after it was drunk, and therefore, the commerce part would be local. But if they sold this product to a dealer, like the jobber, Mr. Storm, and he should take a boat, automobile, or wagon and go in Connecticut and peddle it, the vodka would get out of the State and into interstate commerce. And yet, the Monopol Company would have nothing to do with the way it got there except that they made it and started it. So the law made a provision in section 2 of the statute that the introduction into any State from any other State or Territory of any article of food or drugs, which is adulterated or misbranded within the meaning of the act is thereby prohibited. That means that the shipment of the goods is made illegally. The goods could be stopped in shipment if Congress provides the machinery for so doing, and when Congress passes a statute about that they become contraband.

Then the statute goes on to say that if any person shall ship or deliver for shipment from one State to another State, in original unbroken packages, any such article so adulterated or misbranded, within the meaning of this act, or who shall offer for sale in the District of Columbia, or the Territories and so on, any of these misbranded or adulterated articles can be seized and the shipper punished.

You can see that if these goods are sold by a jobber, as you have heard in this case they were sold by the Russian Liquor Company (which has the word

"Russian" in it, but aside from that it might be New York Liquor Company, or anything else) if it was sold by that company to this man in Philadelphia, and if the liquor company did the packing and the shipping and took the goods to the express company or the depot, then the Russian Monopol Company, the manufacturer, never had any idea until they came in court as to just what party got this liquor or what party would drink it. So you can see, if you are merely considering the statute, "No person shall ship or offer for shipment any of these articles," you would immediately say that was the liquor company, and the manufacturer had nothing to do with it. So in order to prevent the manufacturer from sending out something adulterated or misbranded and then having an innocent third party or second party do the shipping, and thereby get in trouble with this statute, Congress went on and said that no dealer (that is jobber) shall be prosecuted when he can establish a guarantee signed by the wholesaler or manufacturer from whom he purchased the article, to the effect that the same is not adulterated or misbranded, and the guarantee shall show the name and address of the party or parties making the sale, and in such case the said party or parties shall be amenable to the prosecution, fines, and other penalties which would attach in due course to the dealer under the provisions of the act.

So by this statute the responsibility for the transshipment of misbranded or adulterated vodka is, if it is shipped, for instance, to Philadelphia, transferred to the party who manufactures it and sells it, so that he may be brought into the shipment. So that knowledge of what is going to be done with it, or how it got there has nothing to do with the case, and this defendant is brought here in Court to answer such a charge. I only explain this because you can dismiss all that part of the case out of this question.

This defendant is brought here charged with this: That it, on a certain date which you have here, here in Brooklyn, manufactured an article which they—I do not mean manufactured, I mean they sold an article, not whether it was actually made by them or bottled by them—that they put it into commercial form, and that they sold it with the idea that it should be put into consumption, and knowing, if it was consumed in New York, or retailed in New York, that the laws of New York would apply; and if anyone sold it out of the State, that the laws of the United States would apply, and they, therefore, attempted to comply with the statute of the United States by giving this guarantee so that the articles could go into interstate commerce, and this they put upon the bottle in print, the guarantee by the Russian Monopol Company, which, of course, shows they are the persons who stand in the position of maker or dealer rather than jobber, "Guaranteed by the Russian Monopol Company under the Pure Food Act," and then it is torn off "30, 1906." So that makes this defendant responsible for whatever happens if you are satisfied beyond a reasonable doubt that the article did go through interstate commerce, and was in the condition that it is brought in here when it went through interstate commerce.

As to that you have the right to consider the testimony of the witnesses, and if you do not believe that this bottle was found in Philadelphia, that it was sold to a Philadelphia man, and that it ever went into interstate commerce, if you are not satisfied of that beyond a reasonable doubt, of course, your verdict will be not guilty.

But there is no serious dispute made of that. Most of the facts as to that were admitted, so you can assume that the defendant is here in court defending or justifying the label and the statements that are upon the bottle upon the facts which, if you believe them as they were stated, indicate that it had furnished a guarantee. You can assume that the goods went into interstate commerce, that thereby the United States has jurisdiction, this statute applied, and that thereby a charge of misbranding would be made out if this article was misbranded so that it would come within the statute. So, if the Government establishes that beyond reasonable doubt, that brings us to the question of what constitutes misbranding and whether or not the defendant is shown beyond reasonable doubt to have sent out this article misbranded.

Now, there are a number of provisions in the law about this term of misbranding. I do not want to read all of them. Section 8 says that the term "misbranded" shall apply to articles of food, or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article or the ingredients or substances contained therein which shall be false or misleading in any particular. And in the case of food it shall be deemed misbranded if it be an imitation of or offered

for sale under a distinctive name of another article. That is, if the label be branded so as to deceive or mislead the purchaser or purport to be a foreign product when not so, and if it shall not correctly state the quantity and weight, and so on, or improperly show the ingredients of which it is made. That presents the question you have here. I am not going to go into all the testimony.

You will have to take this up step by step, as I have indicated, and see if the Government has proved beyond reasonable doubt each step, and when you come to consider this last step or question, as to whether there is a misleading label which would make this purport to be a foreign product, and whether it would inform the purchaser as to what were the sort of contents, as to whether it would inform the purchaser so as not to be false and misleading, then you would render your verdict after having reached a conclusion as to the other matters according to the way in which you would answer the question whether the Government has proved beyond a reasonable doubt that this exhibit, this bottle, does have upon it a label that was misleading or which would indicate it was a foreign product when it was not, and whether it is false in any material particular.

Now, then, I must refer to one thing about that. That question you will see does not include this question of knowledge or intent, except in this way: This being a corporation, we can assume that human beings—that is, men—have to do the work, and that, therefore, whoever bottled this liquor, put the labels on, did it with the exercise of some mental process; even if it was done by machinery, somebody had to run the machine and provide the material for it. A corporation could not do that without some service; and although the defendant is a corporation, you must look at it from the same standpoint as if it were a man and that he had done all these acts himself. And the question is this, whether this defendant, assuming the total of its acts is the same as the acts of an individual, used a label which was actually false and misleading and purported to show that this was a foreign product and was intended to deceive people into purchasing it or considering it a foreign product when it was not. And that, of course, involves a proposition or understanding of the language on the label, the way in which the goods would be used and the character of the persons who would buy the goods and the circumstances under which it might be sold.

That brings you to another point. If they had an order to sell these goods to a professor in some college who was known to have a chair for the teaching of the Hebrew language and the Russian language, if they sent this bottle to him, you would judge of the act from the standpoint of the intelligent knowledge of the person who sent it, or who shipped it, and of the person who was going to use it. If the product was going to be sold to the public generally (you have heard testimony enough to indicate as to whether that public constituted those who can read Russian and those who can read Hebrew and those who can read English) those who were interested in a Russian or kosher product to be used by a Jew or sold to some one who wanted spirits, whisky, vodka, or schnaps, or whatever they call it—it contained a fairly large percentage of alcohol—and who was purchasing it without reference to the name or label upon it, simply because of the amount of alcohol in it.

All those customers are within the knowledge of possible intent. In so far as they told you what the customers were, you can judge of the knowledge of those customers. You can view whether this label could not be misleading and whether it was not a label for that purpose at all, whether it was a label that might deceive somebody, or whether it was intended to be misleading, deceiving, and would purport to show something not in the bottle to those who would be deceived. You can see if they took an old tomato catsup bottle and put this product in it and the words "Tomato Catsup" were blown in the bottle it would be ridiculous for somebody to charge it was not tomato catsup unless we had other facts to raise that question. But if they sell a product that is called tomato catsup as a liquor, and when it is sold to anyone who wants that kind of liquor, you are to consider whether it would mislead or deceive, or purported to be some other article, to any of those who might have occasion to purchase it upon the statement on the label or the oral statement of those who passed it off with that label.

That brings us to the contents of the label. You have had the testimony of the picture of the rabbi, and this statement that it is all right for Passover use, so the Jews would be satisfied. You have had the statement that it has Russian in print upon it, so those who have learned to use vodka or had something to do with the kosher vodka, because they had some tie back to Russia,

would understand that this had also had some tie or connection with the Russian product. You have heard the testimony that the certificates that the rabbis put on were so that the Jews would be satisfied it was all right for them, and also that there was a rabbi who was either in Vilna, or had been in Vilna, or had been made a rabbi in Vilna, or had some connection with Vilna, so that he said he was "from Vilna," so that this substance would be connected by analogy with the substance that the people would consider Russian.

There is no harm in any of that. That does not bring them within the statute. That simply explains the way this link or tie was to be used here and the product known in Russia was made.

When you come down to the express wording, the express language upon the label, and the way in which it was printed, then you have to consider generally this question: If instead of printing these labels all in Yiddish or all in Hebrew or all in Russian and then putting on another label which should be all in another language (for instance, if Russian were used first, if they put on a complete label that would have all the reading in Hebrew, and then another label for Yiddish, and then a fourth label, perhaps, which would have it all in English, which you know is one of the ways of conveying the information to anybody who might use it), if instead of so doing they used one language for each line or statement, and then when they got to the next line or statement they used a different language (as, I say, if some of the characters are Russian, some of the characters are Jewish, some of the characters of Yiddish), so it would evidently indicate only a part of the information to those who would recognize only a part of the characters, then the question comes directly to you, gentlemen of the jury, as to whether you see any misleading or deceiving method or choice of words, choice of print, choice of arrangement, or whether any of the statements would inform persons dealing with this or purchasing it that it was not actually Russian vodka. You have to see if that is proven beyond a reasonable doubt.

Now, you have had some testimony as to the price of imported vodka, or as to the use of imported vodka—if people could get it, or wanted to get it, or wanted to pay the price for it—and the issue really is a comparatively narrow one.

If the Government satisfies you beyond a reasonable doubt, having made out the other things I told you must enter into the situation, that this label and the paster and the words on the inside or backside of the label were written in the form they were, so as to indicate to any of the people of these different races or nationalities that this article was something other than they would suppose it to be; and if they were misled either in buying it for something else or in paying a greater price for what was not worth so much, or in assuming they were getting one thing when they were getting another; and if the Government proves beyond a reasonable doubt that the labels were put on and created in this form, so as to make it possible to do that, then the defendant is guilty of misbranding.

On the other hand, if the Government does not prove the case to that extent, or if the testimony indicates that these labels and the way they were printed, and so on, represent merely a haphazard attempt to describe the product by issuing something that could be read or located or understood by those of the different races that were trying to identify the product; and if the label merely would sell the goods to those who did not care where they came from, and would not be deceived in what they were buying, or who would pay no attention to what they were buying; and if, therefore, this label was not prepared so as to work a deception in cases where it could deceive or would be likely to deceive, then your verdict should be not guilty.

It practically comes down, as I say (if you believe the testimony of the witnesses as to the undisputed points, and if you have got definitely in your minds the purpose and extent of this statute) to this simple question of fact, as to whether or not the labels and language were put on and sold, and whether the intelligent or knowing use of this form of bottling and the words on the labels that were put on there was such that it would come within the prohibition of the statute and deceive persons who were buying something they thought was something else because of the way it was printed. If the Government proves that beyond a reasonable doubt, your verdict should be guilty.

I have said quite a lot about it because it is not a matter that could actually be stated in a few words. There are too many points in the case, but when you get down to the issue, if you get the idea, it is a simple question, and that rests with you.

Mr. Altman. I think the charge was so eminently fair to both sides that I have nothing to add. However, the district attorney in summing up said that if the Government had produced witnesses to show that they were deceived, or received an article which they did not ask for, or asked for Russian liquor and received this, that they would not have been permitted to so testify. I ask your honor to charge that it is the law if persons had been produced who went and asked for any kind of liquor, they could have testified as to what they received and asked for, and whether they were deceived or not.

The Court. I shall simply charge the jury that if there had been any witness here who could have testified, so that it could be evidence, as to just how he purchased an article, just what he understood about it, just what intelligence was conveyed to him either by what was said or by the label, I might let him testify. But, on the other hand, what I should charge if a man came here and said he could not read this thing at all but that he understood enough from something or other, I should probably exclude the testimony on the ground that he was not giving facts but that he was giving a sort of conclusion, not evidence. I could not charge on that proposition. We did not have this witness. You have the question: What would be the effect upon these ordinary individuals described in the testimony? And you have got to create a sort of purchaser in your minds, as well as what he would understand.

Mr. Smith. In that connection, I will ask the court to charge that it was not necessary for the Government to produce persons to testify in actual instances that they had been deceived by the label.

The Court. No. I do so charge that.

Mr. Smith. I ask your honor to charge that as to the interstate shipment the jury can take into account the admissions of the guaranty and the testimony of Dr. McIntyre, who purchased this bottle.

The Court. That is not disputed. There is no evidence to contradict it. The jury does not need to believe the evidence at all if there is anything in the case that leads them to believe the case was made up and the things charged did not happen. But the shipment and sale is not disputed, and undisputed testimony should be believed unless you see some reason to disregard it. The positively false statement appears on the labels.

Mr. Smith. I ask your honor to charge that if the jury is satisfied beyond a reasonable doubt that this label, or these labels, as a whole or in part, are likely to create the impression—a mistaken impression—that this is a foreign product, they may find the offense of misbranding was committed, although no positively false statement appears on the labels.

The Court. Yes. If the effect of the whole would cause that, you do not have to find any particular word or statement on which to base your opinion. I so charge. I think I have.

The jury thereupon retired and after due deliberation returned a verdict of guilty, and on February 17, 1917, the court imposed a fine of $199.

Carl Vrooman, *Acting Secretary of Agriculture.*

5543. Adulteration of candy. U. S. * * * v. Watson, Durand-Kasper Grocery Co., a corporation. Tried to the court. Judgment of guilty. Fine, $20 and costs. (F. & D. No. 7422. I. S. Nos. 17093-k, 17095-k, 17097-k, 17100-k, 18801-k, 18802-k, 18803-k.)

On July 27, 1916, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Watson, Durand-Kasper Grocery Co., a corporation, Salina, Kans., alleging shipment by said company, in violation of the Food and Drugs Act, on or about February 1, 1915 (7 shipments), from the State of Kansas into the State of Colorado, of quantities of candy, variously labeled, which was adulterated.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that they were musty and stale, that animal excreta, larvæ, worms, and weevils were present in most of the samples and microscopic examination showed the presence of organisms and molds.

Adulteration of the article in each shipment was alleged in the information for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid vegetable substance.

On August 26, 1916, the defendant company filed its demurrer to the information. On May 14, 1917, the case came on for hearing and was submitted to the court on the demurrer to the information and the stipulated facts, the court deeming such submission as amounting to a waiver of the demurrer. After due consideration the defendant was found guilty on May 17, 1917, and sentenced to pay a fine of $20 and costs, as will more fully appear from the following decision by the court (Pollock, *D. J.*):

The Government filed an information in this case against defendant, charging it in seven counts with as many violations of what is commonly known as the Food and Drugs Act of June 30, 1916 [1906] (34 Stat., 768), in the shipment from the city of Salina, this State, to the city of Denver, in the State of Colorado, of 250 pails of "confectionery," commonly called candy, consigned to one A. Lang, all as evidenced by two freight bills of the Union Pacific Railway Co., copies of which are attached to the complaint. To this complaint, and each and every count thereof, defendant interposes a general demurrer. The defendant further pleading not guilty, a trial by jury was waived and the entire controversy submitted on stipulated facts. The case thus comes on for decision.

Two questions are presented for determination, viz:

(1) Conceding the facts pleaded in the several counts of the information sufficient to charge defendant with the commission of one or more public offenses under the terms of the act, and the stipulated facts sufficient to clearly show the guilt of defendant, does the evidence found in the stipulated facts show defendant guilty of more than one offending against the law or amenable to more than a single punishment?

(2) It being admitted by the evidence the product offered for interstate shipment and so shipped by defendant was "confectionery," commonly called candy, and the charge made as the information pleaded being such product was adulterated, in that it contained in whole or in part a "filthy, decomposed, and putrid vegetable substance," does the information, or either count thereof, sufficiently charge defendant with adulteration of "confectionery," in violation of the act?

As the case stands submitted on both the demurrer to the information and each count thereof, and on the stipulated facts, and as resort must be had to the facts of the case to get at the true nature of the transaction, I deem it the better practice to treat the demurrer as having been waived by the submission of the case on its merits, or at least to overrule the demurrer and consider the questions presented by a consideration of the case on its merits.

It appears, as was admitted at the trial, defendant company is a wholesale grocery company doing business in the city of Salina, this State. In the conduct of its said business it handles "confectionery," commonly called candy, in wholesale quantities. On or about the 1st day of February, 1915, in the conduct of its said wholesale candy business, there had accumulated in the possession of defendant a very considerable quantity of old, stale, unsalable rem-

nants of candy. The consignee named in the bills of lading, A. Lang, applied to and purchased this candy from defendant, giving instructions to ship the same to him at the city of Denver, Colo. What purpose the buyer had in making the purchase or what use was intended by the purchaser to be made of the candy the evidence does not show. In pursuance of said shipping instructions, defendant delivered the candy in pails to the Union Pacific Railway Co., and did cause the same to be shipped to the purchaser at the city of Denver, Colo. That the purchase and sale thus made in bulk, or at wholesale, by defendant constituted but one transaction is apparent. While the railway company issued two freight bills covering the entire shipment, yet it is equally clear but a single shipment of the candy was made.

In such case may the Government carve out of the single transaction of sale, purchase, and shipment more than one offense under the terms of the act?

Looking now to the provisions of the act, it is seen to be its purpose, by section 1, to prohibit within territory under the jurisdiction of the United States the manufacture or misbranding of foods and drugs. By section 2 of the act to prohibit the shipment or offer for shipment in interstate commerce of adulterated or misbranded food or drug products. Conceding, therefore, the candy complained of in this case was adulterated in violation of the act, yet, as there was but a single sale, purchase, and shipment of the adulterated product, as the entire matter charged grew out of a single transaction and a single shipment, it must follow the plaintiff can carve out of this single transaction but a single offense. Although there were 250 pails of the candy shipped, yet here, as under the provisions of the 28-hour law, the shipment made or offered by defendant must be taken as the unit, although it may consist of many parcels. No greater reason appears for dividing the shipment in question under the Food and Drug Act, all being comprehended under the general term "confectionery," into different lots or parcels than would appear for making the many different head or cars of stock a separate violation of the 28-hour law. (B. & W. Southwestern R. R. *v.* United States, 220 U. S., 94.)

Coming now to the remaining question, defendant contends although the adulterated product charged to have been shipped in interstate commerce is pleaded to have been a food product, as the evidence discloses it to have been "confectionery," commonly called candy, and as the act by its terms defines in what the adulteration of "confectionery" consists, namely, "if it contains terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor," and as the adulteration here charged is not by the use of a mineral but of a vegetable substance, therefore, applying the rule of *ejusdem generis*, the act does not by the addition of the phrase, "or other ingredient deleterious or detrimental to health," cover a case in which the substance, deleterious or detrimental to health ingredient, is of a vegetable and not a mineral substance.

From a careful reading of the act I can not give my assent to this construction for this reason: Conceding candy to fall under the general classification of "confectionery"; further conceding Congress has by the terms of the act specified what constitutes an adulteration of "confectionery," all as by defendant contended, yet I am of the opinion the phrase, "or other ingredient deleterious or detrimental to health," is not limited by or restricted to the preceding phrase, "or other mineral substance or poisonous color or flavor." On the contrary, I am of the opinion it was the intent of the lawmaking power to provide that "confectionery" may be adulterated in violation of the terms of the act in three distinct and separate manners or ways: (1) By causing it to contain "terra alba, barytes, talc, chrome yellow, or other mineral substance or poisonous color or flavor"; (2) by permitting it to contain or include any "other ingredient deleterious or detrimental to health"; or (3) by the use of "any vinous, malt, or spirituous liquor or compound or narcotic drug."

To my mind, this is the clear, unambiguous intent of the lawmaking power as gathered from the language employed in the act specifying the manners in which "confectionery" may be said to have been adulterated.

It follows from what has been said judgment must go for plaintiff for a single penalty for the violation of the act.

It is therefore ordered the plaintiff have and recover from the defendant a penalty of $20 and costs of this prosecution.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5544. Adulteration of pork and beans with tomato sauce. U. S. * * * v. 435 Cases * * * of * * * Pork and Beans with Tomato Sauce. Product ordered released on bond. (F. & D. No. 7424. I. S. No. 10143-l. S. No. C-512.)

On May 11, 1916, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 435 cases, each containing 24 cans of Harvest Treasure Brand pork and beans with tomato sauce, remaining unsold in the original unbroken packages at Keokuk, Iowa, alleging that the article had been shipped on or about November 27, 1915, by the Norfolk Packing Co., Norfolk, Nebr., and transported from the State of Nebraska into the State of Iowa, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in whole or in part of a filthy, decomposed vegetable substance.

On April 11, 1917, the said Norfolk Packing Co., a corporation, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the cans of beans should be opened, cleaned, repicked, recanned, and reprocessed under the supervision of a representative of this department, the decomposed and partly decomposed beans to be removed from the product and destroyed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5545. Adulteration and misbranding of white groats." U. S. * * * v. Joseph Kaufman (Kaufman Milling Co.). Plea of guilty. Fine, $25. (F. & D. No. 7432. I. S. No. 10314–k.)

On August 3, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Joseph Kaufman, trading as the Kaufman Milling Co., New York, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, on October 30, 1915, from the State of New York into the State of Rhode Island, of a quantity of an article invoiced as "Fine White Groats," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of a mixture of granulated buckwheat, corn, and barley, the amount of corn and barley being not less than 25 per cent of the total mixture.

Adulteration of the article was alleged in the information for the reason that substances, to wit, a mixture of corn and granulated barley, had been substituted in whole or in part for buckwheat groats, which the article purported to be.

Misbranding was alleged for the reason that the article was a product other than buckwheat groats, to wit, a mixture of corn and granulated barley, and was offered for sale and sold under the distinctive name of another article, to wit, buckwheat groats, which the article purported to be.

On May 24, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5546. Misbranding of "Greenhalgh Diphtheria Remedy" and alleged misbranding of "Locus Oil," "Blood Purifier," "Cancer Powder," "Liniment," "Rupture Powder," "Drawing Ointment," and "Canker Syrup." U. S. * * * v. Greenhalgh Remedy Co., a corporation. Plea of guilty to count 1 of the information. Fine, $100. Other counts of information dismissed. (F. & D. No. 7450. I. S. Nos. 17439-k, 17440-k, 17441-k, 17443-k, 17444-k, 17448-k, 17449-k, 17451-k.)

On September 5, 1916, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Greenhalgh Remedy Co., a corporation, Salt Lake City, Utah, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about September 21, 1914, from the State of Utah into the State of California, of a quantity of an article labeled in part, "Greenhalgh Diphtheria Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it was essentially a mixture of sulphur, borax, trace of starch, plant tissue carrying berberine; iron, aluminium, and potassium, as sulphates and nitrates; charcoal and traces of manganese dioxid indicated.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it as a remedy for diphtheria and as a cure for sore throat and croup, when, in truth and in fact, it was not.

On February 24, 1917, the defendant company entered a plea of guilty to the first count of the information charging misbranding of the diphtheria remedy, and the court imposed a fine of $100. The other counts of the information charging misbranding of the seven other articles were dismissed by the court on motion of the United States attorney.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5547. Adulteration and misbranding of pepper. U. S. * * * v. 6 Barrels of Ground Pepper. Tried to the court. Finding for the Government. Decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 7462. I. S. No. 4805–l. S. No. E–623.)

On May 24, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 6 barrels of ground pepper, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped on or about April 18, 1916, by McCormick & Co., Baltimore, Md., and transported from the State of Maryland into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Pure Ground Black Pepper. McCormick & Co. * * * Baltimore, Md."

Adulteration of the article was alleged, in substance, in the libel for the reason that added pepper shells had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted wholly or in part for the article.

Misbranding was alleged in the libel (as amended during the trial) for the reason that the statement, to wit, "Pure Ground Black Pepper," was false and misleading in that said article was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, black pepper, when it was not; and for the further reason that it was labeled and branded so as to deceive and mislead a purchaser in that it purported to be another article.

On September 16, 1916, the said McCormick & Co., claimant, filed its answer denying the allegations of the libel. On December 20, 21, 22, 27, and 29, 1916, the case came on to be heard before the court, trial by jury having been waived by stipulation, and after the introduction of evidence and arguments by counsel, the case was taken under advisement by the court. On February 10, 1917, final arguments were made by respective counsel and briefs filed. On February 27, 1917, a finding was made sustaining the contentions of the Government, as will more fully appear from the following decision by the court (Manton, *D. J.*):

On the 17th of April, 1916, 10 barrels of pepper were sold by the claimant to Samuel Wildes Sons Co. under an order calling for "10 barrels pure ground black pepper." The shipment was so marked and it was conceded by the claimant, indeed, so claimed, that the pepper sold and shipped was pure ground black pepper. On the 24th of February, 1916, 6 barrels were seized by the marshal and on the 27th of May, 1916, they were sampled by the libellant and thereafter experimentation with the samples was made as hereafter stated. The samples were taken by the Government inspector at the house of Wildes, a hole was bored about a quarter of an inch in bore through one of the staves of each of the barrels by a brace and bit. The samples so taken were from various parts of each barrel. Care was taken in the preservation of these samples and they were given to the Government chemist, Seeker, for analysis in his laboratory. He, together with an assistant, Cummings, conducted the experimentation with the results herein stated. The claimant contends that this pepper was Lampong pepper, a high grade of black pepper grown in the southeastern end of the island of Sumatra and commonly used in this country. The claimant, McCormick & Co., are large importers of pepper, perhaps the largest in this country, and have been engaged in business in Baltimore for a long period of years.

Pure ground black pepper is defined in Circular 19, issued by the Department of Agriculture on June 26, 1916, as follows:

"PEPPER.

"Black pepper is the dried immature berry of *Piper nigrum* L. and contains not less than six (6) per cent of nonvolatile ether extract, not less than

twenty-five (25) per cent of starch, not more than seven (7) per cent of total ash, not more than two (2) per cent of ash insoluble in hydrochloric acid, and not more than fifteen (15) per cent of crude fiber. One hundred parts of the nonvolatile ether extract contain not less than three and one-quarter (3.25) parts of nitrogen. Ground black pepper is the product made by grinding the entire berry and contains the several parts of the berry in their normal proportions."

The Department of Agriculture officially advised McCormick & Co. on August 1, 1916, that—

"Ground peppers will be regarded as adulterated and misbranded, if, upon examination, they are found not to comply with the standards in Circular 19, Office of the Secretary of Agriculture."

The Government has taken the position generally, in the enforcement of the Federal Food and Drugs Act of June 30, 1906, that a ground black pepper conforming to the standard above mentioned, defined in Circular 19, is not a violation of the act. A product not made solely by grinding the entire black pepper berries and containing the several parts of the berry in their normal proportions, but containing also some added foreign substance, is not a pure ground black pepper, and if shipped in interstate commerce is in violation of the Federal Food and Drugs Act.

The Government's claim is that McCormick & Co., in order to gain an advantage in competition, adulterated its black pepper with foreign pepper shells and it contends that this adulteration was carried on only to such an extent that an analysis made of the product would find that such adulterated and misbranded pepper would come within the limits of Circular 19.

In Lampong pepper the ash and fiber are comparatively high, due to excess sand, twigs, and trash. Hence, to make room in Lampong pepper for the addition of a larger quantity of shells, all of this excess trash, twigs, and mineral matter is taken out. If, from 100 pounds of pepper, there is removed 3 per cent or 3 pounds of sand or gravel, leaving 97 pounds of pepper, there would be practically a negligible quantity of ash. By taking shells containing 8.21 per cent of ash, 25 pounds can be added to the 97 pounds of clean pepper, and the result, 122 pounds mixture, would give 95 pounds less ash than the original 100 pounds contained. This 25 pounds is, of course, in addition to the shells that might safely have been mixed in the pepper before the excess mineral matter was removed. Control of crude fiber could be illustrated in exactly the same way and with substantially the same result. It is claimed by the Government that by some such method of scientific control, this pepper was standardized and kept as near uniform as possible. In other words, to each grind as much shell was added as could be put in with safety. After the grind, customarily analyses were made, as Shoul testified, to ascertain whether the pepper, as sold, came up to the requirements of Circular 19. Both the Government and the claimant concede that if foreign pepper shells were added to the natural pepper berry, such a mixture would be an adulteration and a violation of the act.

The sole inquiry, therefore, is one of fact, whether under the proof in this case, this pepper sold to Wildes and subsequently sampled contained pepper shells as charged in the libel. This question of fact the court is called upon to decide.

It may readily be conceded that with the possibility of mixing pepper shells and the pepper berry, the mix can be so arranged that it will contain the essential properties required under Circular 19. Therefore, a chemical analysis alone is not sufficient as a method of detection. Apparently the Government recognized this, for it conceived a method of detection and carried out its plan. It experimented, prior to endeavoring to carry out its plan of detection, and found that quinine alkaloid was no part of the properties of pepper or pepper shells. Such experiments were had, that it was scientifically determined by the experimenting chemist, that if quinine alkaloid were mixed with pepper and pepper shells, it could be subsequently detected in the laboratory on analysis.

Two well-known tests of obtaining such result are known to science. One is the so-called modified Thalleioquin test and the other the Hereapathite and Fluorescence tests. With this knowledge, after learning that McCormick & Co. were the consignee of 199 bags of pepper shells then at a dock in Baltimore, the Government inspectors, on May 27, 1916, proceeded to the dock and there, with the use of a syringe, mixed quinine alkaloid with each of the bags of pepper shells, putting an equal quantity, 1 ounce, of quinine alkaloid in each bag.

After the samples were obtained from the barrels seized at Wildes house, the Government analysts, Seeker and Cummings, examined 19 separate samples from 7 different barrels of the shipment of pepper in issue, to determine the presence of quinine alkaloid. The modified Thalleioquin test was employed. Of the 19 samples so tested, 13 returned a negative and 6 returned a positive reaction. Of the first series of samples 4 returned a negative and 3 a positive reaction. Of the second series of samples, 4 returned a negative and 2 a positive reaction. Of the third and final series of samples, 5 returned a negative and 1 a positive reaction. Three barrels returned a negative reaction upon every test. One barrel returned a positive reaction throughout. One barrel returned 2 positive and 1 negative reaction, and another barrel returned 2 negative and 1 positive reaction. The examining chemist explains that positive reaction refers to the red color obtained by the application of the test, and alleges that this demonstrates the presence of quinine alkaloid. In addition, the chemist, Seeker, testified that he applied the Hereapathite and Fluorescence tests on a composite sample of 400 grams of mixture, two samples from barrels A and B, and a third sample from barrel A. These last two tests returned a positive reaction. These tests were those applied by the chemist, Seeker, in his experiments prior to syringing quinine alkaloid into the pepper shells. From his previous experience, Chemist Seeker learned that a minimum of 2 mm. of quinine in 200 gms. of pepper sample would invariably return the positive red color reaction. Approximately 30 cc. of quinine solution was injected into each of the 199 bags of pepper shells as previously described, and Seeker estimates that he can detect the presence of 6 per cnet at a minimum of the treated shells in this pepper, and concludes, upon the result of his examination, that this pepper contains from 10 to 28 per cent of quinine treated shells.

The inquiry, therefore, is whether this conclusion is positive and accurate. Cummings, the assistant to Seeker, gives corroborative testimony as to the findings .

The entire consignment of 6 barrels is all part of the same grind or mix, and the claimant concedes that if quinine alkaloid was found in 3 barrels, and that this indicates a mixing of pepper and pepper shells, the 6 barrels should be condemned. Learned counsel for the claimant argues that, assuming that the presence of quinine alkaloid in a part of this pepper has been conclusively established, it follows that before such evidence can be accepted as sufficient proof of the addition of quinine alkaloid treated shells to this pepper, the Government must show the absence of any other reasonable possibility of quinine alkaloid finding its way into this pepper. In view of the concession that quinine alkaloid is not one of the properties of pepper and that McCormick & Co. were concededly using pepper shells, I can not agree with counsel that it is incumbent upon the Government to show the absence of any reasonable possibility of quinine alkaloid finding its way into the pepper in any other manner.

The examination made of this pepper by Seeker is attacked as insufficient and inconclusive because it is said that the examination as made does not demonstrate the presence of quinine alkaloid with the certainty required. I can not find that any of the experts called by the defense, and they were many, had ever actually experimented in detecting quinine alkaloid where it has been mixed with pepper shells.

A very general and severe attack is made, however, upon the sufficiency of the tests used by Dr. Seeker, but when the testimony is examined with care it will demonstrate that it resolves itself largely into a matter of opinion; opinion expressed by men learned in the science but men who have not experimented. Drs. Pond and Winton gave no testimony at all upon quinine tests. Dr. Penniman stated that the proof was not sufficiently conclusive and further that "you could not determine the presence of quinine with certainty unless you had pure quinine to test." But he did admit that if the Thalleioquin test were applied and the result obtained as claimed by Dr. Seeker, it would be some evidence of the presence of quinine and that positive reaction from the Hereapathite test would be evidence of the presence of quinine, and that the Fluorescence test would also give some evidence of the presence of quinine, and admitted generally that the three tests were of value in detecting the presence of quinine. He says that the density of the color obtained upon the positive reaction would be indicative of the quantity of quinine present and that the density would have some relation to the quantity. He then describes a method of making this test, which upon comparison with Dr. Seeker's, I find to be precisely what he did. This materially weakens the opinion evidence of Dr. Penniman.

Dr. Deghuee, another expert, on direct examination, expressed grave doubt of the sufficiency of the tests made by Dr. Seeker, but says that if both the Hereapathite and Thalleioquin tests were made, both together would "make out a little stronger case." Dr. Fuller admits that the three tests used by Dr. Seeker, if the observations of Dr. Seeker are correct, would be some evidence of the presence of quinine alkaloid. Dr. Winton's testimony is not at variance with this method of detection. Dr. Winton further testified that a microscopical examination "in itself" is not sufficient except in cases where a foreign ingredient such as almond or cocoanut shells or olive stones are used, and further that "if it were a carefully selected Lampong pepper, which had been cleaned and scoured and some of the natural elements removed, and those were afterwards replaced by pepper shells," he would not expect to find from 10 to 28 per cent of shells on a microscopical examination.

Such quibbling of experts expressing but opinion testimony, in the absence of similar experimentation to that of Dr. Seeker, can not be said to overcome the observations of Dr. Seeker after his study, research, and labor which obtained a positive reaction indicating the presence of the detector which was used by the Government inspectors.

But it is said that the test of the microscope, as applied by Dr. Rusby, submitted by him, negatives the claim made here. Dr. Winston's doubt of the sufficiency of the microscopical examination "in itself" for the purposes of detection creates grave doubt as to its sufficiency. He admits that he can not distinguish the shell of Lampong pepper from Acheen pepper. The latter, Acheen pepper, is a lower-grade pepper than Lampong, and it is hard to conceive of how the difference between the lower grade of Lampong pepper and a mixture of shells and the higher-grade pepper can be determined by the microscope. This witness produced slides in court and gave the court an opportunity to observe his various specimens. I do not think that this testimony overcomes that offered by the Government, which, I believe, shows by a fair preponderance of the evidence that quinine alkaloid was found in the pepper seized. Quinine alkaloid could not accidently have found its way into the 6 barrels seized. Mr. Shoul testified that no chemicals of any kind or foreign drugs could possibly get mixed in the pepper or pepper shells, nor can I infer that by some possibility empty cinchona bark barrels might have been used for packing the 6 barrels of pepper. Each of the barrels seized were lined with a heavy grade of paper and there is no evidence in the record that the barrels were used for cinchona bark at any time. Shoul, who had charge of the grinding department, testified that no pepper shells could have accidently found their way into this lot of pepper, and that if the pepper did contain added shells, they must have been put in deliberately.

R. A. McCormick seems to have charge of the spice department of the claimant, while M. McCormick is in charge of the drug department. Shoul has been the sole head of the spice department. Large quantities of pepper shells were received within the preceding year of the date of the seizure, which are not satisfactorily accounted for by the evidence of the claimant. The original records produced did not show the disposition of the pepper shells and particularly of the quinine alkaloid marked pepper shells received in this lot of 199 bags. The only record produced of a shipment of pepper and pepper shells, properly marked, was to one Goldberg.

This, with the other testimony in the record, leads to the conclusion that the pepper in question was adulterated, and I will accordingly give a decree for the libellant.

Thereafter on March 20, 1917, a formal decree of condemnation and forfeiture was entered in conformity with the foregoing decision, and it was ordered by the court that the product should be sold by the United States marshal after having been labeled, "Ground black pepper containing from 10 per cent to 28 per cent of added pepper shells," and that the costs of the proceedings should be paid by McCormick & Co.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5548. Alleged misbranding of "Bell-ans." U. S. v. Bell & Co., a corporation. Tried to the court and a jury. Verdict of not guilty. (F. & D. No. 7475. I. S. No. 515-k.)

On August 10, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Bell & Co., a corporation, Orangeburg, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on September 21, 1914, from the State of New York into the State of Maryland, of a quantity of an article, labeled in part, "Bell-ans," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Charcoal (per cent)	6.31
Sodium carbonate (per cent)	11.17
Sodium bicarbonate (per cent)	77.34
Methyl salicylate: Present.	
Papain: Present.	
Ginger: Present.	
Saccharin: Present.	

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on the labels of the bottle and carton and certain statements included in the circular or pamphlet accompanying the article falsely and fraudulently represented it as effective in the treatment of and for relieving vomiting in pregnancy, cholera morbus, alcoholism, and seasickness; in the treatment of indigestion, vertigo, peritonitis, and dyspepsia; for digesting every variety of food, removing every symptom of indigestion and restoring the entire digestive tract to normal condition; as a treatment for biliousness, sick headache, colic, and cramps; and as a remedy for every derangement of the digestive organs, when, in truth and in fact, it was not.

On February 5, 1917, the defendant company entered a plea of not guilty to the information. On April 9, 1917, the case having come on for trial before the court and a jury, after the submission of evidence and arguments by counsel, the following charge was delivered to the jury by the court (Cushman, *D. J.*):

Gentlemen of the jury, as indicated by the arguments of the attorneys, the issue has been fairly stated by both counsel. This indictment, or rather information, charges the defendant with having on a certain day in 1914 shipped in interstate commerce from New York to Baltimore certain articles, described in the information, in a package containing labels and circulars, which contained statements regarding the effect as a medicine of the contents of the package.

The information charges that these statements on the labels and in the circulars were false and fraudulent; that they were known by the company that put them out and made this shipment to be false and fraudulent; that they were made in such reckless disregard of the truth that it could not be said that they honestly believed them to be true. Hence they were fraudulent.

To this information the defendant has entered a plea of not guilty, which places the burden upon the Government of establishing every material allegation of the information by evidence sufficient to convince you beyond a reasonable doubt of the guilt of the defendant before you can return a verdict of guilty.

In that connection, I instruct you that it is not necessary that the Government, in order to warrant you in returning a verdict of guilty, should have proven that every one of the representations on these labels and in these circulars were false and fraudulent regarding the curative or therapeutic effect of these medicines—of this article of medicine—but before you could return a verdict of guilty it would be necessary that the Government should have established by evidence sufficient to satisfy you beyond a reasonable doubt that at least one of the statements regarding the curative or therapeutic effect of this medicine—I can not remember the name of it—was false and fraudulent.

This law, in substance, forbids anyone to send in interstate commerce misbranded articles of medicine. Then it defines an article as misbranded if the label or circular contains any statement regarding the curative or therapeutic effect of such article which is false and fraudulent. And then it prohibits anybody doing the like of that, and if they do do it they are to be punished.

Now, the issue has been narrowed very materially and counsel in their argument have conceded it. It comes to this: Is any one of the statements on this label or in this circular concerning the curative or therapeutic effect of this medicine false and fraudulent? The first thing when you retire to consider on your verdict would be to take up logically whether any one of these statements was false. If you conclude that there was not evidence sufficient to convince you beyond a reasonable doubt that any one of these statements was false, your verdict would be not guilty; but if you should find that some of these statements were false and untrue then the next step that you would have to undertake would be to determine whether the defendant in putting out these circulars and labels with those statements on them did so fraudulently. That is, whether it knew them to be false. If you find that it honestly believed from reports of doctors and patients that had taken this medicine and had good reason to believe that all these representations were reasonably accurate and true, then it would not be fraudulent, because you could not say that defendant knew them to be false.

I consider it necessary to give you a general idea of what the word fraudulent means in that connection. A fraudulent representation must contain the following elements: First, it must be false; second, the person who makes it must know it to be false; third, he must make it to some one with an idea that that some one will believe it and act in the belief that it is true; and, lastly, it must be made under such circumstances as might lead an ordinary person to believe it was true.

And if he did believe it was true, and acting in that belief, he parted with his money, he would be cheated out of it, because it was not so.

All those things enter into a fraudulent representation.

Take this representation set out in the indictment, or information, just take a single one to illustrate, but the same rule applies to all these statements regarding the curative or therapeutic effect of this article of medicine—that is, it is stated in there that it relieves vomiting in pregnancy. Now, taking that statement alone, before you could find the defendants guilty concerning that statement you would have to find that that statement was false; you would have to find that the defendant did not believe it to be true; that the defendant either knew it was false or made it with such reckless and wanton disregard, regarding its truth, as to amount to the same thing. And you would have to find that it was made by the defendant with the idea that people would buy the medicine in the belief that it would relieve vomiting in pregnancy; and that it was made under such conditions as to induce ordinary persons to buy it in that belief.

Many of the things charged here are admitted. That is, the defense admits that it shipped the parcel. They admit that these labels were used, and they admit, of course, that the labels were put on there to induce the buying public to buy the medicine in the belief that it would do the work as it is described as doing in the labels and circulars. So you come back to the sole question in the case for you to determine, which is, whether those statements are true or whether they are false, and if false, whether the defendant made them, knowing they were false, or with such reckless disregard of the truth as to amount to the same thing.

I will read you certain instructions that I think I have covered already in substance in what I have already told you, but to be sure that the ground is covered, these have been prepared by counsel for the defense, and I will read them that I may see that his client is protected in its rights.

"As the offense charged here is a misdemeanor, the Government must satisfy you of the defendant's guilt beyond a reasonable doubt and if it fails in that respect, you must acquit the defendant.

"The first question of fact for the jury to determine on the evidence of this case is whether the statements made by the defendant in its circular and label as to the therapeutic or curative effects of its tablet are false. If you are not convinced that such statements are false, you must acquit.

"If you find these statements are false, then the other and remaining question is whether such statements were made fraudulently, for the crime is not established by merely showing that the statements are untrue. They must have been made fraudulently as well as untruthfully.

"The question as to whether these statements were fraudulently made involves a state of mind, the defendant's state of mind when it, through its agents, issued these statements. In other words, were these statements made with the knowledge that they were untrue and with the intention to deceive? What is actually in the mind of the defendant is a question of fact for your determination from all the evidence in the case.

"The officers of the defendant corporation, as the owner of this alleged remedy, had a perfect right to state their views regarding the merits and effectiveness of the tablets, and if these statements brought into issue here were made honestly in the belief that they were true they are not fraudulent within the meaning of the act.

"In determining as to whether the defendant's use of the words contained in the challenged statements was false and fraudulent, the jury have the right to consider the ideas conveyed by such words in their common usage to the average person as distinguished from the ideas conveyed to the average physician or scientist.

"The court's denial of the motion made by the defendant's counsel for a direction of a verdict in its behalf in no way indicates any opinion of the court upon the subject of the defendant's guilt and the views of the court as to the merits of the case. The significance of the denial is that there were questions of fact in the case which should be submitted to the jury."

There is no presumption arises against the defendant by reason of the fact that it has been indicted and brought to trial before you, but every presumption of law is in favor of the defendant's innocence. This presumption continues throughout the trial with the defendant; and until the Government has produced evidence sufficient to overcome this presumption and satisfy you beyond a reasonable doubt, and prove every material allegation of the indictment, or, in this case, the information, by evidence which satisfies you beyond a reasonabel doubt of the guilt of the defendant.

If you have a reasonable doubt concerning any material allegation in the indictment, it will be your duty to acquit.

Reasonable doubt as used in these instructions is just what the two words joined together mean. That is, a doubt based on reason; a doubt for which you can give a reason. It does not mean every possible doubt. Nothing in this world, scarcely, can be established beyond all questions of mistake, but it does require, before you can return a verdict of guilty, that the guilt of the defendant must be shown by more than a mere preponderance of the evidence. That requirement of the law is that it should be established by evidence sufficient to satisfy you beyond a reasonable doubt. Reasonable doubt has been defined to be such a doubt as a man of ordinary firmness would allow to cause him to hesitate in the more important transactions concerning his own affairs.

You are in this case, as in every case where questions of fact are submitted to the jury, the sole and exclusive judge of every question of fact in the case, and of the weight of the evidence and the credibility of the witness.

In weighing the evidence and making up your minds as to the amount of credit which should be given to the various witnesses, you should take into account their appearance upon the stand, whether they appeared to you to be credible, whether they have inspired your confidence by their appearance. You should take into consideration their manner and demeanor in giving this testimony, whether it was such as to inspire your confidence or to repel it; whether it appeared to you that the witness was trying to tell you all that he knew about the case, neither holding back nor volunteering anything, or whether it appeared to you that he was reluctant and evasive and holding back what he knew or claimed to know until it was dragged out of him. On the other hand, whether he impressed you as being too willing and anxious to volunteer matters which no one inquired about. Also, you will take into account the testimony of each witness, whether it appeared to be reasonable and probable; whether it appeared to be complete in detail as you would expect it to be under the circumstances, or whether it had holes in it; whether it is corroborated by other evidence in the case where you would expect it to be corroborated if it were true; whether it is contradicted by other evidence in the case. You will also take into account the interest each witness has in the issues presented in the case, either by his manner or his relation to the case.

Thereupon the jury retired on April 10, 1917, and after due deliberation returned a verdict of not guilty on April 11, 1917, and judgment was entered accordingly.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5549. Adulteration of fruits in mustard. U. S. * * * v. Foreign Specialties Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 7489. I. S. No. 2703-k.)

On October 2, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Foreign Specialties Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, on November 14, 1914, from the State of New York into the State of Massachusetts, of a quantity of fruits in mustard, which was adulterated.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Copper in greened fruits (mg per kilo)---------- 26
Salicylic acid in the sirup (mg per kilo)---------- 58.6
Character of sample: Whole fruit and sliced fruit in heavy sirup in tin container.

Adulteration of the article was alleged in the information for the reason that it contained added poisonous and deleterious ingredients, to wit, copper and salicylic acid, which may render such article injurious to health.

On November 28, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

CARL VROOMAN, *Acting Secretary of Agriculture.*

5550. Misbranding and alleged adulteration of rapeseed (mustard seed). U. S. * * * v. 260 Bags * * * of Rapeseed. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 7504. I. S. No. 12920–l. S. No. C–534.)

On June 6, 1916, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 260 bags, each containing 160 pounds of rapeseed, alleging that the article had been shipped on or about May 6, 1916, by the North American Mercantile Co., San Francisco, Cal., and transported from the State of California into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was invoiced as mustard seed.

Adulteration of the article was alleged in the libel for the reason that yellow rapeseed, brown seeds, and dirt had been substituted wholly for mustard seed, which the article purported to be.

Misbranding was alleged for the reason that said rapeseed was an imitation of, and offered for sale under the distinctive name of, another article, to wit, mustard seed.

On April 14, 1917, the Widlar Co., Cleveland, Ohio, claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, the court finding the product misbranded, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that said article should not be sold or disposed of unless properly labeled to show the true character of said rapeseed.

CARL VROOMAN, *Acting Secretary of Agriculture.*

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United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, Chief of Bureau.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 5551–5600.

[Approved by the Acting Secretary of Agriculture, Washington, D. C., March 27, 1918.]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

5551. Misbranding and alleged adulteration of so-called mustard seed. U. S. * * * v. 260 Bags * * * of Rapeseed. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 7505. I. S. No. 12921-l. S. No. C-535.)

On June 6, 1916, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 260 bags, each containing 160 pounds of rapeseed, alleging that the article had been shipped on or about May 6, 1916, by the North American Mercantile Co., San Francisco, Cal., and transported from the State of California into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was invoiced as mustard seed.

Adulteration of the article was alleged in the libel for the reason that yellow rapeseed, brown seeds, and dirt had been substituted wholly for mustard seed, which the article purported to be.

Misbranding was alleged for the reason that said rapeseed was an imitation of and offered for sale under the distinctive name of another article, to wit, mustard seed.

On April 14, 1917, the Widlar Co., Cleveland, Ohio, claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, the court finding the product misbranded, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that said article should not be sold or disposed of unless properly labeled to show the true character of said rapeseed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5552. Alleged misbranding of "Akoz." U. S. * * * v. Natura Co., a corporation. Tried to the court. Finding of not guilty. (F. & D. No. 7509. I. S. Nos. 655-h, 17823-k.)

On August 5, 1916, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Natura Co., a corporation, San Francisco, Cal., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about June 29, 1914, and December 17, 1914, from the State of California into the State of Utah, of quantities of an article labeled in part "Akoz," which was misbranded.

Analysis of samples of the article by the Bureau of Chemistry of this department showed the product to be a gray powder, essentially a clay. For use the contents of a small package are to be added to one-half gallon of water as per directions. The clear solution contains total solids equal to 200 parts per million, consisting essentially of calcium sulphate.

It was alleged in substance in the information that the article in each shipment was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it as a remedy for stomach troubles, indigestion, dyspepsia, kidney troubles, and rheumatism, when, in truth and in fact, it was not. It was alleged in substance that the article in each shipment was misbranded for the further reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as a treatment for Bright's disease and diabetes, pyorrhea, inflammation of the bladder, frequent urination, and cystitis, and as a remedy for toothache, when, in truth and in fact, it was not.

On April 5, 1917, the case came on for trial before the court, a jury having been waived, and after the submission of evidence and arguments by counsel, the case was submitted to the court and taken under advisement. On May 9, 1917, it was ordered that judgment be entered finding the defendant not guilty, as will more fully appear from the following decision by the court (Dooling, *D. J.*):

The defendant is charged with a violation of the Food and Drugs Act in misbranding a certain article of medicine sold by it and known as Akoz. To fall within the statute the package or label must bear or contain some statement, design or device regarding the curative or therapeutic effect of the article or some ingredient or substance contained therein, which is false and fraudulent. No purpose would be served here in reviewing the testimony. It may be said in a general way that the testimony of the Government was chiefly "expert" testimony, that is to say, testimony of skilled persons as to the possible effect of the use of Akoz. None of them had ever experimented with it, or tried it either on themselves or others, nor had any of them ever had the opportunity to observe any results from its use. The testimony for the defendant was given by witnesses, physicians and others who had used the medicine themselves, or had observed its effect on others, and all testified to its beneficial effects.

The misbranding claimed in the indictment is the statement that Akoz is a natural remedy for certain specified diseases, and that it had proved effective in the treatment of such diseases and others named.

The Government insists that the word "remedy" is synonymous with "cure" and cites a definition from Webster's International Dictionary as follows:

"Remedy: that which cures a disease," but the real definition found in that Dictionary is the following: "Remedy: that which relieves or cures a disease." The Standard Dictionary gives the following definition: "Remedy: that which is used in any way for the cure or relief of bodily disease; a medicine; also remedial treatment."

It cannot therefore in this criminal action be concluded that when the defendant used the word "remedy" it used it as synonymous with "cure," nor can it be concluded that the word would be understood by the public to mean "cure."

There is testimony that Akoz has relieved all the diseases specified, and that the proprietors were informed of that fact.

The Court is not endorsing Akoz as a curative or remedial agent. But this is a criminal case where the guilt of the defendant must be established beyond a reasonable doubt, and the Government must show beyond such doubt that the statements made were both false and fraudulent. It has not done so, and a judgment will be entered finding the defendant not guilty.

On May 9, 1917, judgment finding the defendant not guilty was entered in accordance with the foregoing decision.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5553. Adulteration and misbranding of so-called mustard seed. U. S. * * * v. 10 Bags * * * of Yellow Rapeseed. Decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 7510. I. S. No. 11383-l. S. No. C-542.)

On June 6, 1916, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 bags, each containing approximately 160 pounds of yellow rapeseed, consigned on or about May 29, 1916, by L. S. Nachman, Chicago, Ill., remaining unsold in the original unbroken packages at Cincinnati, Ohio, alleging that the article had been shipped and transported from the State of Illinois into the State of Ohio, and charging adulteration in violation of the Food and Drugs Act. The article was invoiced as "Golden Gate Mustard Seed."

Adulteration of the article was alleged in the libel for the reason that yellow rapeseed, brown seeds, and dirt, had been substituted in part for mustard seed.

Misbranding of the article was alleged for the reason that it was an imitation of, and was offered for sale under the distinctive name of, another article, to wit, mustard seed.

On June 30, 1916, the said L. S. Nachman, claimant, filed his answer denying the allegations of the libel. On April 12, 1917, the case came on to be heard upon the pleadings, and a jury having been waived, it was found by the court that the article was adulterated and misbranded, and it was ordered that the same should be condemned, and, after having been properly labeled, should be sold by the United States marshal, and that the said claimant should pay the costs of the proceedings.

C. F. Marvin, *Acting Secretary of Agriculture.*

5554. Misbranding of "Stuart's Calcium Wafer Compound." U. S. * * * v. 240 Packages and 144 Packages of Stuart's Calcium Wafer Compound. Default decrees of condemnation, forfeiture, and destruction. (F. & D. Nos. 7513, 7514. I. S. Nos. 3649–l, 3651–l. S. Nos. E–639, E–640.)

On June 8, 1916, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 240 packages and 144 packages of "Stuart's Calcium Wafer Compound," invoiced by F. A. Stuart Co., Marshall, Mich., remaining unsold in the original unbroken packages at Jacksonville, Fla., alleging that the article had been shipped on or about January 20, 1916, and March 31, 1916, and transported from the State of New York into the State of Florida, and charging misbranding in violation of the Food and Drugs Act, as amended.

It was alleged in substance in the libel that the article was misbranded for the reason that the bottles, cartons, and circulars contained statements regarding the article and the ingredients and substances contained therein which were false and misleading, that is to say, the labels on the bottles contained the following statement, to wit, "If bowels do not move freely double the dose as the preparation is perfectly harmless," and on said circulars were the following statements, to wit, "Children may take it with freedom and their delicate organisms thrive with its use * * *. If obstinate constipation of the bowels is present the dose may be increased until satisfactory movement is secured, as they are entirely harmless * * *. Stuart's Calcium Wafer Compound should be used in connection with Stuart's Dyspepsia Tablets in all cases where the bowels are at all constipated, as they remove this condition speedily, safely and without pain or griping * * *, containing no poisonous ingredients. * * *. People who need a laxative, a good tonic and not a stimulant or who suffer from skin eruptions, blood disorders, or nervous weakness of any kind will find in these wafers a perfectly safe remedy * * *. Costs more than pills for constipation but is worth more than the difference in price because, in the first place, it is far safer * * *. Stuart's Calcium Wafer Compound contains no alcoholic stimulant, opiate, or mercury, iodide potassium or similar poisons. It can be safely used by any person, man, woman or child, with the assurance that no possible injury can result from its use," whereas said statements as aforesaid are false and misleading in that the said drug contained a poisonous substance, to wit, strychnine. Misbranding was alleged for the further reason that the bottles, cartons, and circulars contained in said cartons contained statements regarding the curative and therapeutic effect of said article which were false and fraudulent, that is to say, said cartons contained the following statement, to wit, "For eruptions, scrofula * * * constipation, humor, liver troubles * * * and all disorders and symptoms arising from impure blood." The labels on the bottles contained the following statement, to wit, "For * * * blood disorders, skin affections, any derangement of the blood, bowels, kidneys or liver," and said circulars contained the following statements, to wit, "Blood troubles and skin disease * * *. Calcium Sulphide * * *. The most powerful blood purifier known. Skin diseases are relieved when the blood is charged with this great eradicator. The blood at once feels its influence and eruptions cease * * *. No matter what degree of eruptive skin troubles you may have Stuart's Calcium Wafer Compound will purify and enrich the blood * * *. The liver is aided, stomach reinforced and skin diseases are assailed from their source * * *. For chronic or temporary blood disorders and skin diseases these wafers are without an equal * * * should be used to enrich and purify the blood * * *.

Restoring the normal action of the bowels, liver and excretory organs * * *. For skin diseases, eruptions, boils and pimples the wafers act beneficially and satisfactorily, in many cases causing the absorption of humors, boils and carbuncles in a few days time * * *. Will infuse renewed energy and strength into the exhausted nerves, the overworked brain or muscular system * * * Containing in concentrated form all the elements to repair nerve tissue and depleted blood. Will relieve and prevent constipation and thereby keep the liver and bowels in normal healthy condition," whereas said statements contained on said cartons, bottles, and circulars with reference to the curative or therapeutic effect of said article were false and fraudulent in that it contained no ingredient or combination of ingredients capable of producing the therapeutic effects claimed in said statements above set forth.

On May 15, 1917, no claimant having appeared for the property, judgments of condemnation and forfeiture were entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5555. Adulteration and misbranding of vinegar. U. S. * * * v. 10 Half Barrels and 25 Crates of Vinegar. Default decree of condemnation and forfeiture. Product ordered sold. (F. & D. No. 7516. I. S. Nos. 3634–l, 3635–l. S. No. E–643.)

On June 8, 1916, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 10 half barrels and 25 crates of vinegar, consigned by Dawson Brothers Manufacturing Co., Atlanta, Ga., alleging that the article had been shipped on February 18, 1916, and transported from the State of Georgia into the State of Florida, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part: "Supreme Brand" (or "Georgia Belle Brand") "Pure Apple Cider Vinegar."

Adulteration of the article was alleged in the libel for the reason that added dilute distilled vinegar or added dilute acetic acid had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for the article.

It was alleged in substance in the libel that the article was misbranded for the reason that the statement appearing on the label, to wit, "Pure Apple Cider Vinegar," was false and misleading, and deceived and misled the purchasers into the belief that said article was pure apple cider vinegar, when, in truth and in fact, it was not, but was apple cider vinegar containing added dilute distilled vinegar or added dilute acetic acid, and was an imitation of and offered for sale under the distinctive name of another article, to wit, pure apple cider vinegar.

On May 14, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold at public auction by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5556. Adulteration of beans. U. S. * * * v. 15 Bags of Beans. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 7544. I. S. No. 4674–l. S. No. E–649.)

On June 14, 1916, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 15 bags of beans, consigned by George L. Jessup, Pompeii, Mich., remaining unsold in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped and transported from the State of Michigan into the State of Maryland, the shipment having arrived at Baltimore, Md., on or about June 2, 1916, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it contained cull beans, decomposed beans, moldy and anthracnose beans, clumps of dirt, kernel [of] corn, and grains of wheat.

On July 31, 1916, Edward P. Smith, trading as E. P. Smith & Co., Baltimore, Md., claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $250, in conformity with section 10 of the act, conditioned in part that the product should be sorted, and that the portion found to be adulterated should not be sold or disposed of for any purpose other than fertilizer, cattle, hog, or other animal food, and that the portion found free of adulteration after sorting might be sold for human consumption.

C. F. Marvin, *Acting Secretary of Agriculture.*

5557. Misbranding of "Stuart's Calcium Wafers." U. S. * * * v. 21 Packages of Stuart's Calcium Wafers. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7547. I. S. No. 3656–l. S. No. E–652.)

On June 14, 1916, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 21 packages of "Stuart's Calcium Wafers," remaining unsold in the original unbroken packages at Macon, Ga., alleging that the article had been shipped on or about May 1, 1916, by the F. A. Stuart Co., Marshall, Mich., and transported from the State of Michigan into the State of Georgia, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part, "Stuart's Calcium Wafers * * *."

It was alleged in substance in the libel that the article was misbranded for the reason that the boxes, cartons, and circulars contained certain statements regarding the article and the ingredients and substances contained therein which were false and misleading, that is to say, said label on the bottles contained the following statement, to wit, "If bowels do not move freely, double the dose as the preparation is perfectly harmless," and on said circular were the following statements, to wit, "Children may take it with freedom, and their delicate organism thrive with its use. * * *. If obstinate constipation of the bowels is present, the dose may be increased until satisfactory movement is secured, as they are entirely harmless. * * * Stuarts Calcium Wafer Compound should be used in connection with Stuarts Dyspepsia Tablets in all cases where the bowels are at all constipated, as they remove this condition speedily, safely, and without pain or griping * * *, containing no poisonous ingredient * * * people who need a laxative, a good tonic (not a stimulant), or who suffer from skin eruptions, blood disorders, or nervous weakness of any kind, will find in these wafers a perfectly safe remedy * * * cost more than pills for constipation, but is worth more than the difference in price, because, in the first place it is far safer. Stuarts Calcium Wafer Compound contains no alcoholic stimulants, opiate or mercury, iodide potassium, or similar poisons. It can be safely used by any person, man, woman or child, with the assurance that no possible injury can result from its use," whereas said statements aforesaid are false and misleading in that the said drug contained a poisonous substance, to wit, strychnine. Misbranding was alleged in substance for the further reason that the boxes, cartons, and circulars contained in said cartons contained statements regarding the curative and therapeutic effect of said article which were false and fraudulent, that is to say, said carton contained the following statement, to wit, "For eruptions, scrofula, * * * constipation, humor, liver trouble * * * and all disorders and symptoms arising from impure blood." The labels on the boxes contain the following statement, to wit, "For * * * blood disorders, skin affections, any derangement of the blood, bowels, kidneys or liver," and said circular contained the following statement, to wit, "Blood troubles and skin diseases * * * calcium sulphide * * * the most powerful blood purifier known. * * * Skin diseases are relieved when the blood is charged with this great eradicator. The blood at once feels its influence and eruptions cease * * * no matter what degree of eruptive skin trouble you may have. Stuarts Calcium Wafer Compound will purify and enrich the blood * * *. The liver is aided, the stomach reinforced and skin diseases are assailed from their source * * *. For chronic or temporary blood disorders and skin diseases these wafers are without an equal * * *. Should be used to enrich and purify the blood * * * restoring the normal action of the bowels, liver and

excretory organs * * * for skin diseases, eruptions, boils and pimples. The Wafers act beneficially and satisfactorily, in many cases causing the absorption of humors, boils and carbuncles in a few days' time * * * will infuse renewed energy and strength into the exhausted nerves, the overworked brain or muscular system * * * containing in concentrated form all of the elements to repair nerve tissue and depleted blood. Will relieve and prevent constipation and thereby keep the liver and bowels in normal healthy condition," whereas said statements contained on said cartons, boxes, and circulars with reference to the curative or therapeutic effect of said article were false and fraudulent in that it contained no ingredient or combination of ingredients capable of producing the therapeutic effects claimed in said statements above set forth.

On May 17, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5558. Misbranding of "Dr. Hilton's Specific No. 3." U. S. * * * v. G. W. Hilton's Specifics, Inc., a corporation. Plea of nolo contendere. Fine, $50. (F. & D. No. 7548. I. S. No. 1422–l.)

On August 21, 1916, the United States attorney for the district of Massachusetts, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against G. W. Hilton's Specifics (Inc.), a corporation, Lowell, Mass., alleging the sale by said company, on or about August 21, 1915, in violation of the Food and Drugs Act, under a guaranty that the article was not misbranded within the meaning of the said act, of a quantity of an article labeled in part, "Dr. Hilton's Specific No. 3," which was a misbranded article within the meaning of the said act, as amended, and which said article, in the identical condition in which it was received, was shipped by the purchaser thereof, on September 20, 1915, from the State of Massachusetts into the State of Maine, in further violation of the said act, as amended.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted of uncoated sugar pills, moistened with alcohol.

Misbranding of the article was alleged in the information for the reason that it contained alcohol, and the label failed to bear a statement of the quantity or proportion of alcohol contained therein. It was further alleged in substance that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a treatment for colds, coughs, grippe, bronchitis, and all ills that develop from a cold, and as a preventive of pneumonia, when, in truth and in fact, it was not.

On April 17, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5559. Adulteration and misbranding of apple cider. U. S. * * * v. Missouri Cider and Vinegar Co., a corporation. Plea of guilty. Fine, $45 and costs. (F. & D. No. 7574. I. S. Nos. 14797-k, 15257-k, 11791-l.)

On January 16, 1917, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Missouri Cider and Vinegar Co., a corporation, St. Louis, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about July 21, 1915, July 28, 1915, and December 9, 1915, from the State of Missouri into the State of Illinois, of quantities of an article labeled in part, "Golden Russet Brand Sweet Apple Cider," which was adulterated and misbranded.

Analyses of samples of the article in each shipment by the Bureau of Chemistry of this department showed the following results:

Shipment of July 28:

Alcohol (per cent by volume)	5.35
Solids, by drying (grams per 100 cc)	2.90
Ash (gram per 100 cc)	0.07
Acid, as malic (gram per 100 cc)	0.58
Volatile acid, as acetic (gram per 100 cc)	0.29
Fixed acid, as malic (gram per 100 cc)	0.26
Total tartaric acid (gram per 100 cc)	0.16
Free tartaric acid (gram per 100 cc)	0.01
Cream of tartar (gram per 100 cc)	0.13

This is a highly diluted cider to which tartaric acid and sugar have been added.

Shipment of July 21:

Alcohol (per cent by volume)	0.32
Total solids (grams per 100 cc)	10.66
Reducing sugars before inversion (grams per 100 cc)	6.54
Reducing sugars after inversion (grams per 100 cc)	9.34
Nonsugar solids (grams per 100 cc)	1.46
Sucrose by copper (grams per 100 cc)	2.66
Total ash (gram per 100 cc)	0.07
Total tartrates, as tartaric acid (gram per 100 cc)	0.09

The results of analysis show the presence of added water, added sugar, and added tartaric acid.

Shipment of December 9:

Alcohol (per cent by volume)	0.30
Total solids (grams per 100 cc)	11.70
Reducing sugars before inversion (grams per 100 cc)	6.15
Reducing sugars after inversion (grams per 100 cc)	10.52
Sucrose by copper (grams per 100 cc)	4.15
Nonsugar solids (grams per 100 cc)	1.40
Total ash (gram per 100 cc)	0.15

The results of analysis show the presence of added water and added sugar.

Adulteration of the article in each shipment was alleged in the information for the reason that a substance, to wit, water, had been mixed and packed therewith so as to reduce or lower, and injuriously affect its quality and strength, and had been substituted in part for sweet apple cider, which the article purported to be.

Adulteration of the article in the shipments on July 21, 1915, and July 28, 1915, was alleged for the further reason that sugar and tartaric acid had been mixed therewith in a manner whereby its inferiority was concealed.

Misbranding of the article in each shipment, except that on December 9, 1915, was alleged for the reason that it was a product composed in part of added water, added sugar, and added tartaric acid, prepared in imitation of sweet apple cider, and was offered for sale and sold under the distinctive name of another article, to wit, sweet apple cider. Misbranding was alleged for the further reason that the statement borne on the label attached to the kegs containing the article, to wit, "Sweet Apple Cider," was false and misleading in that it represented that said article was sweet apple cider; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was sweet apple cider, whereas, in truth and in fact, it was not, but was a product composed in part of water, added sugar, and tartaric acid. Misbranding of the article was alleged for the further reason that it was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package. Misbranding of the article in the shipment on December 9, 1915, was alleged for the reason that it was a product composed in part of added water and added sugar, prepared in imitation of sweet apple cider, and was offered for sale and sold under the distinctive name of another article, to wit, sweet apple cider. Misbranding was alleged for the further reason that the statement borne on the label, to wit, "Sweet Apple Cider," was false and misleading in that it represented that said article was sweet apple cider, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it was sweet apple cider, whereas, in truth and in fact, it was not, but was a product composed in part of added water and added sugar. Misbranding of the article was alleged for the further reason that it was food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package.

On March 15, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $45 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5560. Misbranding of "Sayman's Healing Salve" and "Sayman's Vegetable Wonder Soap." U. S. * * * v. Thomas M. Sayman. Plea of nolo contendere. Fine, $40 and costs. (F. & D. No. 7591. I. S. Nos. 20216–h, 12184–k.)

On October 6, 1916, the United States attorney for the Eastern District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Thomas M. Sayman, St. Louis, Mo., alleging the shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about March 17, 1915, from the State of Missouri into the State of Michigan, of a quantity of an article labeled in part, "Sayman's Healing Salve," which was misbranded, and further alleging the sale by said defendant, on or about March 19, 1914, in violation of the Food and Drugs Act, as amended, under a guaranty that the article was not misbranded within the meaning of said act as amended, of a quantity of an article labeled in part, "Sayman's Vegetable Wonder Soap," which was misbranded, and which said article, in the identical condition in which it was received, was shipped by the purchaser thereof in further violation of the said act as amended, on April 1, 1914, from the State of Missouri into the State of Kansas.

Analysis of a sample of the "Healing Salve" by the Bureau of Chemistry of this department showed that it was an ointment containing chiefly petrolatum, zinc, boric acid, and camphor; the odor indicated traces of a tarry oil.

It was alleged in substance in the information that the "Healing Salve" was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it as a remedy for, and effective when used in connection with Sayman's soap as a remedy for indolent, purulent, scrofulous and chronic old sores, blackheads, pimples, carbuncles, felons, eczema, tetter, salt rheum, ringworm, and piles, and effective when used in connection with Sayman's soap as a remedy for the foregoing conditions and for all skin and scalp diseases, when, in truth and in fact, it was not, either when used alone or in connection with Sayman's soap.

Analysis of a sample of the "Vegetable Wonder Soap" by the said Bureau of Chemistry showed that it was a cold process coconut oil soap.

It was alleged in substance that the soap was misbranded for the reason that certain statements included in the circular accompanying it falsely and fraudulently represented it as a remedy for eczema, tetter, salt rheum, scrofulous, indolent, purulent, and chronic old sores, and, when used in connection with "Sayman's Healing Salve," as a treatment which causes ringworm, skin humor, blackheads, pimples, and pustules to disappear, and as a remedy for piles and all forms of scalp and skin diseases, when, in truth and in fact, it was not, either when used alone or in connection with "Sayman's Healing Salve."

On May 1, 1917, the defendant entered a plea of nolo contendere to the information, and the court imposed a fine of $40 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5561. Adulteration of milk. U. S. * * * v. Union Dairy Co., a corporation. Plea of not guilty. Finding of guilty. Fine, $50. (F. & D. No. 7626. I. S. No. 11710–l.)

On October 9, 1916, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Union Dairy Co., a corporation, doing business at Troy, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 7, 1915, from the State of Illinois into the State of Missouri, of a quantity of milk which was adulterated.

Examination of samples of the article by the Bureau of Chemistry of this department showed that the majority of the samples were either discolored or dirty, or that they contained visible dirt, and that water had been added to most of the samples.

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for milk, which the article purported to be; and for the further reason that it consisted in part of a filthy, putrid, and decomposed animal substance.

On June 7, 1917, the case came on for trial before the court, a jury having been waived, and, after the submission of evidence and arguments by counsel, the court found the defendant company guilty and imposed a fine of $50 and costs. Thereupon the defendant company moved for a writ of error to the Circuit Court of Appeals of the United States for the seventh circuit, and the said writ was allowed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5562. Adulteration of fava beans. U. S. * * * v. 830 Sacks of Fava Beans. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 7648, 7649. I. S. Nos. 21105–m, 21106–m. S. Nos. W–103, W–104.)

On August 16, 1916, the United States attorney for the District of Arizona, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 830 sacks of horse beans, consigned by H. W. Smith, Cayucos, Cal., alleging that the article had been shipped on or about August 11, 1916, and transported from the State of California into the State of Arizona, consigned to L. S. Nachman, Chicago, Ill., and charging adulteration in violation of the Food and Drugs Act.

It was alleged in substance in the libel that the article was adulterated for the reason that it consisted in part of filthy, decomposed, and putrid animal substance.

On September 22, 1916, L. S. Nachman, Chicago, Ill., claimant, filed an answer admitting the allegations of the libel. On October 14, 1916, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant to be sorted under the supervision of a representative of this department, the claimant having paid the costs of the proceedings and executed a bond in the sum of $3,400, in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

5563. Adulteration of grapefruit. U. S. * * * v. 303 Boxes of Grapefruit. Consent decree of condemnation and forfeiture. Good portion released. Unfit portion destroyed. (F. & D. No. 7724. S. No. E–689.)

On September 26, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 303 boxes of grapefruit, remaining unsold in the original unbroken packages at Brooklyn, N. Y., alleging that the article had been shipped on or about September 20, 1916, by N. A. Walcott, San Juan, P. R., and transported from the Island of Porto Rico into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was colored in a manner whereby inferiority was concealed.

On October 3, 1916, W. J. Davenport and S. H. Davenport, New York, N. Y., claimants, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered that the product should be sorted under the supervision of this department, and that the portion found not to be adulterated should be released to said claimants. On November 3, 1916, the portion found to be adulterated was ordered destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

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5564. Adulteration of grapefruit. U. S. * * * v. 558 Boxes of Grapefruit. Consent decree of condemnation and forfeiture. Good portion ordered released. Unfit portion destroyed. (F. & D. No. 7732. S. No. E-693.)

On October 3, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 558 boxes of grapefruit, remaining unsold in the original unbroken packages at Brooklyn N. Y., alleging that the article had been shipped on or about September 27, 1916, by N. A. Walcott, San Juan, P. R., and transported from the Island of Porto Rico into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was sweated to color it in a manner to simulate mature fruit; and further in that it was colored in a manner whereby inferiority was concealed.

On October 10, 1916, W. J. Davenport and S. H. Davenport, New York, N. Y., claimants, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sorted under the supervision of this department and that the portion found not to be adulterated should be released to said claimants. On November 3, 1916, the portion found to be adulterated was ordered destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5565. Adulteration of grapefruit. U. S. * * * v. 54 Boxes of Grapefruit. Consent decree of condemnation and forfeiture. Good portion ordered released. Unfit portion destroyed. (F. & D. No. 7734. I. S. Nos. 2506–m, 8438–m. S. No. E–695.)

On October 2, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 54 boxes of grapefruit, remaining unsold in the original unbroken packages at Brooklyn, N. Y., alleging that the article had been shipped by the Mansfield Plantation of Porto Rico on or about September 27, 1916, and transported from the Island of Porto Rico into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was sweated to color it in a manner to simulate mature fruit; and further in that it was colored in a manner whereby inferiority was concealed.

On October 6, 1916, Bernard Abel & Co., New York, N. Y., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sorted under the supervision of this department, and that the portion found not to be adulterated be released to said claimants. On October 28, 1916, the portion found to be adulterated was ordered destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5566. Misbranding of cottonseed meal. U. S. * * * v. Ralston Purina Co., a corporation. Plea of guilty. Fine, $250 and costs. (F. & D. No. 7816. I. S. No. 19966-l.)

On January 2, 1917, the United States attorney for the Eastern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Ralston Purina Co., a corporation, St. Louis, Mo., doing business at East St. Louis, Ill., alleging shipment by said company, on or about March 23, 1916, from the State of Illinois into the State of Iowa, of a quantity of an article labeled in part, "Winner Prime Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude fiber (per cent)	13.3
Nitrogen (per cent)	5.73
Protein (N x 6.25) (per cent)	35.8
Ammonia (NH_3) (per cent)	6.98

The results show that the article contains less nitrogen, less ammonia, less protein, and more fiber than the amount declared upon the label.

Misbranding of the article was alleged in substance in the information for the reason that the statement borne on the tags attached to the sacks, regarding the article and the ingredients and substances contained therein, to wit, "Guarantee protein 38.5 to 41.00 per cent minimum; * * * ammonia, 7.50 per cent minimum; nitrogen, 6.18 per cent minimum; crude fiber, 12.00 per cent maximum," was false and misleading in that it represented that said article contained not less than the percentages named above of protein, ammonia, and nitrogen, and not more than the percentage named above of crude fiber; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than the percentages named above of protein, ammonia, and nitrogen, and not more than the percentage named above of crude fiber, whereas, in truth and in fact, it contained less than the above-named percentages of protein, ammonia, and nitrogen, and more than the above named percentage of crude fiber, to wit, approximately 35.8 per cent of protein, approximately 6.98 per cent of ammonia, approximately 5.73 per cent of nitrogen, and approximately 13.3 per cent of crude fiber.

On May 21, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $250 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5567. Adulteration of sardines. U. S. * * * v. 100 Cases * * * of Sardines. Consent decree of condemnation and forfeiture. Good portion ordered released on bond. Unfit portion ordered destroyed. (F. & D. No. 7900. I. S. Nos. 1396–m, 2173–m. S. No. E–765.)

On December 5, 1916, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases of sardines, consigned by Mawhinney & Ramsdell, Lubec, Me., remaining unsold in the original unbroken packages at Du Bois, Pa., alleging that the article had been shipped on November 16, 1916, and transported from the State of Maine into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part, "Cobscook Brand American Sardines in Cottonseed Oil Packed by Mawhinney & Ramsdell, Lubec, Wash. Co., Maine * * *."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a decomposed animal substance, 40 per cent of the contents of the cans being partly decomposed fish.

On May 23, 1917, the said Mawhinney & Ramsdell, claimants, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimants upon the payment of the costs of the proceedings and the execution of a bond in the sum of $200, in conformity with section 10 of the act, conditioned in part that the article should be subject to salvage under the supervision of a representative of this department, the portion found fit for human food to be released and the unfit portion to be destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5568. Adulteration of sardines. U. S. * * * v. 200 Cases * * * of Sardines. Consent decree of condemnation and forfeiture. Product ordered released on bond. Portion of product found unfit for food ordered destroyed. (F. & D. No. 7953. I. S. No. 2182-m. S. No. E-787.)

On January 5, 1917, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases of sardines, consigned by the Globe Canning Co., Eastport, Me., remaining unsold in the original unbroken packages at Pittsburgh, Pa., alleging that the article had been shipped on or about October 27, 1916, from the State of Maine into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Irma Brand American Sardines in Oil (Cottonseed), Packed by Globe Canning Co., North Lubec, Wash. Co., Maine."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a decomposed animal substance, 29 per cent thereof being partly decomposed fish.

On April 17, 1917, the said Globe Canning Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be surrendered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that said article should be subject to salvage under direction of a representative of this department, the portion found to be fit for human food to be released, and the portion found not fit for human food to be destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5569. Adulteration of milk. U. S. * * * v. Albert J. Keirle. Plea of guilty. Fine, $50 and costs. (F. & D. No. 7960. I. S. Nos. 10943-m, 10952-m.)

On March 5, 1917, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Albert J. Keirle, Bunker Hill, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about August 15, 1916, and August 18, 1916, from the State of Illinois into the State of Missouri, of quantities of milk which was adulterated.

Analysis of samples of the article in each shipment by the Bureau of Chemistry of this department showed the following results:

Subdivision.	Lactometer 60°.	Butter fat.	Nonfat solids.	Total solids.	Refractive index of serum.	Total solids by drying.
1	28.0	2.7	7.54	10.24	37.6	10.45
2	29.5	3.3	8.04	11.34	.....	.....

The above analysis shows subdivision 1 to be watered and partially skimmed.

Subdivision.	Lactometer 60°.	Butter fat.	Nonfat solids.	Total solids.
1	31.0	2.9	8.33	11.23
2	30.5	3.8	8.39	12.19

The above analysis shows that subdivision 1 has been partially skimmed.

Adulteration of the article in the shipment on August 15, 1916, was alleged in the information for the reason that a certain substance, to wit, water, had been mixed with said article so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for milk, which the article purported to be; and for the further reason that a certain valuable constituent thereof, to wit, butter fat, had been in part abstracted from the said article.

Adulteration of the article in the shipment on August 18, 1916, was alleged for the reason that a certain valuable constituent thereof, to wit, butter fat, had been in part abstracted from the said article.

On June 4, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $50 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5570. Adulteration of milk. U. S. * * * v. William S. Prickett. Plea of nolo contendere. Finding of guilty by the court. Fine, $25 and costs. (F. & D. No. 7988. I. S. Nos. 11818–m, 10942–m.)

On March 5, 1917, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William S. Prickett, New Douglas, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about August 7, 1916, and August 12, 1916, from the State of Illinois into the State of Missouri, of quantities of milk which was adulterated.

Analysis of samples of the article by the Bureau of Chemistry of this department showed the following results:

Subdivision.	Lactometer at 60°.	Fat.	Nonfat solids.	Total solids.	Total solids by drying.
1	28.5	3.6	7.85	11.45	11.52
2	30.4	2.0	8.00	10.00	9.89

The above analysis shows that subdivision 2 has been partially skimmed.

Subdivision.	Lactometer at 60°.	Fat.	Nonfat solids.	Total solids.
1	30.0	2.5	8.00	10.50
2	29.1	2.8	7.84	10.64

The above analysis shows that both subdivisions have been partially skimmed.

Adulteration of the article in each shipment was alleged in the information for the reason that a valuable constituent thereof, to wit, butter fat, had been in part abstracted.

On June 6, 1917, the defendant entered a plea of nolo contendere to the information, but a finding of guilty was made by the court, and said defendant was sentenced to pay a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5571. Adulteration and misbranding of tomato paste. U. S. * * * v. George Roncoroni. Plea of guilty. Fine, $15. (F. & D. No. 8002. I. S. Nos. 2035–i, 2036–l.)

On March 30, 1917, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against George Roncoroni, Alloway, N. J., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about October 20, 1915, and November 1, 1915, from the State of New Jersey into the State of New York, of quantities of an article labeled in part, "Tomato Paste," which was adulterated and misbranded.

Examination of samples of the article in each shipment by the Bureau of Chemistry of this department indicated that it was a partially decomposed vegetable product; and further that the article in one of the shipments contained potato starch and some vegetable substance other than tomatoes.

Adulteration of the article in each of the shipments was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance; and for the further reason that a certain substance to [wit], potato paste, had been substituted in part for tomato paste, which the article purported to be; and for the further reason that potato paste had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength.

Misbranding of the article in each shipment was alleged for the reason that the statement concerning the article and the ingredients and substances contained therein appearing on the label, to wit, "Tomato Paste," was false and misleading in that it represented that the article was tomato paste; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was tomato paste, whereas, in fact and in truth, it was not, but was a mixture of tomato paste and potato paste.

On May 14, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $15.

C. F. Marvin, *Acting Secretary of Agriculture.*

5572. Misbranding of salad oil. U. S. * * * v. Herman Kienzler Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 8012. I. S. Nos. 20214–l, 20215–l, 20216–l, 20217–l, 20238–l.)

On April 9, 1917, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information, and on May 10, 1917, an amended information, against Herman Kienzler Co., a corporation, New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on June 28, 1915; July 30, 1915 (2 shipments); August 4, 1915; and September 23, 1915, from the State of New York into the State of California, of quantities of salad oil which was misbranded. The articles were variously labeled in part, "Huile du Chef Brand," "Garibaldi Di Lucca Brand," "Mayona Brand," and "Chef De Cuisine Brand" (2 shipments).

Analyses of samples of the article by the Bureau of Chemistry of this department showed, respectively, the following results:

	No. 1.	No. 2.	No. 3.	No. 4.	No. 5.
Specific gravity 15.6°C/15.6°C	0.9195	0.9193	0.9226	0.9208	0.9214
Index of refraction 15.6° C.	1.4730	1.4714	1.4725	1.4720	1.4734
Iodin number (Hanus)	108.8	90.3	106.6	102.8	101.8
Halphen test	Positive.	Positive.	Positive.	Positive.	Positive.
Peanut oil test	Negative.	Negative.	Negative.	Negative.	Negative.
Sesame oil test	Negative.	Negative.	Negative.	Negative.	Negative.

Numbers 2, 4, and 5 consist principally of cottonseed oil.

Number 3 consists of a mixture of 2 parts olive oil and 1 part cottonseed oil.

Misbranding of the article in each shipment was alleged in the amended information for the reason that although the article was in package form, the quantity of the contents of the packages was not plainly or conspicuously marked on the outside of the same in terms of weight, measure, or numerical count. Misbranding of the article in one of the shipments on July 30, 1915, was alleged for the further reason that the statements concerning the article and the ingredients and substances contained therein, appearing on the label, to wit, "Huile Du Chef Brand" and "Bordeaux & New York," together with the designs and devices appearing on said label, were false and misleading in that they indicated to purchasers that it was a foreign product, to wit, an oil produced in France; and for the further reason that it was labeled as aforesaid and marked thereon with a device of an olive branch and with a picture of a man of French appearance, so as to deceive and mislead purchasers into the belief that said article was a product of foreign origin, to wit, an oil produced in France, whereas, in truth and in fact, it was not, but was a product of domestic origin, to wit, a product made in the United States of America. Misbranding of the article in the other shipment on July 30, 1915, was alleged for the reason that it was an imitation of another article, to wit, olive oil, and that by means of the statements, designs, and devices, appearing on the label attached to the cans containing the article, it was offered for sale under the distinctive name of another article, to wit, olive oil, whereas, in truth and in fact, it was not, but was, to wit, a mixture of olive oil and cottonseed oil; and for the further reason that the statement concerning the article and the ingredients and substances contained therein, appearing on the label, to wit, "Garibaldi Di Lucca," together with the design and device of an olive branch and of a

crossed shield appearing on the label, were false and misleading in that they indicated to purchasers that the article was a foreign product, to wit, an olive oil produced in the district of Lucca in Italy; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into [the] belief that it was a foreign product, to wit, an olive oil produced in the district of Lucca in Italy, whereas, in truth and in fact, it was not, but was a product of domestic origin, to wit, a product made in the United States of America. Misbranding of the article in both shipments of July 30, 1915, was alleged in substance for the further reason that said statements, designs, and devices purported that said article was a foreign product, to wit, an oil produced in France (or an olive oil produced in the district of Lucca in Italy, as the case might be), whereas, in truth and in fact, it was not, but was a product of domestic origin, to wit, a product made in the United States of America. Misbranding of the article in the shipments on June 28, 1915, and September 23, 1915, was alleged for the further reason that the statements concerning the article and the ingredients and substances contained therein, appearing on the label, to wit, "Chef De Cuisine" and "Nice & New York," together with the device of an olive branch and the picture of a man of French appearance appearing on the said label, indicated to purchasers that it was a product of foreign origin, to wit, an olive oil produced in France; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was a product of foreign origin, to wit, an olive oil produced in France, whereas, in truth and in fact, it was not, but was a product of domestic origin, to wit, a product made in the United States of America; and for the further reason that the aforesaid statements, device, and picture purported that it was a foreign product, to wit, an olive oil produced in France, whereas, in truth and in fact, it was not, but was a product of domestic origin, to wit, a product made in the United States of America.

On May 21, 1917, the defendant company entered a plea of guilty to the amended information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

5573. Adulteration and misbranding of lemon oil. U. S. * * * v. M. Getz & Co., a corporation. Plea of guilty. Fine, $50. (F. & D. No. 8014. I. S. No. 9882-h.)

On March 27, 1917, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against M. Getz & Co., a corporation, San Francisco, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, on or about June 17, 1914, from the State of California into the State of Oregon, of a quantity of lemon oil invoiced as "Oil," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Specific gravity, 15.6° C./15.6° C	0.8519
Angular rotation (100 mm at 20° C) (degrees)	−60.40
Refractive index, 20° C	1.4744
Citral (Kleber) (per cent)	2.8
Alcohol (per cent by volume)	2.1
Iodoform test for alcohol: Positive.	
Examination of first 10 per cent distillate after washing with saturated salt water:	
Angular rotation, 20° C (degree)	−58.09
Index of refraction, 20° C	1.4737
Sample is a washed lemon oil.	

Adulteration of the article was alleged in the information for the reason that a substance, to wit, washed lemon oil, had been substituted in whole or in part for lemon oil, which the article purported to be; and for the further reason that a valuable constituent thereof, to wit, citral, had been wholly or in part abstracted therefrom.

Misbranding was alleged for the reason that the article was a product consisting of, to wit, washed lemon oil, and was offered for sale under the distinctive name of another article, to wit, lemon oil.

On May 3, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5574. Adulteration and misbranding of tomatoes. U. S. * * * v. 350 Cases of Canned Tomatoes. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 8052. I. S. No. 1988–m. S. No. E–802.)

On February 2, 1917, the United States attorney for the Southern District of Georgia, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 350 cases of canned tomatoes, remaining unsold in the original unbroken packages at Macon, Ga., alleging that the article had been shipped on or about August 11, 1916, by the Hartlove Packing Co., Baltimore, Md., and transported from the State of Maryland into the State of Georgia, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, "Hartlove Brand Tomatoes * * *."

Adulteration of the article was alleged in the libel for the reason that added water had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for the article.

Misbranding was alleged for the reason that the labeling and branding of the article were false and misleading and the cans were labeled and branded so as to deceive and mislead the purchasers, the contents of the cans not being pure canned tomatoes, as the label was calculated to and did in fact induce a purchaser to believe, but, in truth and in fact, each can contained from 15 to 20 per cent, or other large proportion, of added water and did not contain what was represented by the labels.

On May 18, 1917, the A. B. Small Co., Macon, Ga., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a good and sufficient bond, in conformity with section 10 of the act, conditioned in part that the article should be relabeled to show its true contents.

C. F. Marvin, *Acting Secretary of Agriculture.*

5575. Misbranding of cottonseed meal. U. S. * * * v. John R. Lanier, Edwin B. Lanier, and Brown H. Lanier (Lanier Bros.). Pleas of guilty. Fine, $50 and costs. (F. & D. No. 8064. I. S. No. 9165-l.)

On April 28, 1917, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against John R. Lanier, Edwin B. Lanier, and Brown H. Lanier, trading as Lanier Bros., Nashville, Tenn., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about September 28, 1915, from the State of Tennessee into the State of New Hampshire, of a quantity of an article labeled in part, "Jersey Brand Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude fiber (per cent)	13.22
Protein (N x 6.25) (per cent)	37.19

Lower in protein and higher in crude fiber than stated on the label.

Misbranding of the article was alleged in the information for the reason that the following statements regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Protein 38.62% * * * Crude Fiber (maximum 10%)," were false and misleading in that they represented to purchasers that said article contained not less than 38.62 per cent protein and not more than 10 per cent of fiber; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it contained not less than 38.62 per cent protein and not more than 10 per cent fiber, when, in truth and in fact, it contained less than 38.62 per cent protein and more than 10 per cent fiber; and for the further reason that said article consisted of food in package form, and the quantity of the contents was not plainly or conspicuously marked on the outside of the package in terms of weight, measure, or numerical count.

On June 11, 1917, the defendants entered pleas of guilty to the information, and the court imposed a fine of $50 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5576. Adulteration and misbranding of hydrogen peroxid. U. S. * * * v. The Arthur Chemical Co., a corporation. Plea of nolo contendere. Fine, $10 and costs. (F. & D. No. 8068. I. S. Nos. 3890–l, 21150–l.)

At the February, 1917, term of the District Court of the United States for the District of Connecticut, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said district court an information against The Arthur Chemical Co., a corporation, New Haven, Conn., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 15, 1916, and May 29, 1916, from the State of Connecticut into the States of Washington and Massachusetts, respectively, of quantities of an article labeled in part, "Hydrogen Peroxide," which was adulterated and misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed, respectively, the following results:

	No. 1.	No. 2.
Hydrogen peroxid (H_2O_2) (per cent)	2.58	2.61
Available oxygen (volumes)	8.49	8.59
Free acids (c c N/10 acid per 25 c c)	4.1	5.5
Total solids (gram per 20 c c)	.....	0.04

Adulteration of the article in each shipment was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, to wit, hydrogen peroxid, and differed from the standard of strength, quality, and purity as determined by the tests laid down in the said Pharmacopœia, official at the time of the investigation of the said article, in that it contained 2.58 per cent (or 2.61 per cent) by weight of hydrogen peroxid, equivalent to 8.49 volumes (or 8.7 [8.59] volumes) of available oxygen; and that in one shipment the article contained 0.04 gram total solids; that in both shipments 25 cubic centimeters of the article contained free acids equivalent to 4.1 cubic centimeters (or 5.5 cubic centimeters) tenth normal acid; whereas said Pharmacopœia provides that it should contain about [not less than] 3 per cent by weight of absolute hydrogen peroxid, corresponding to about [not less than] 10 volumes of available oxygen; that the total solids of the article should not exceed 0.03 gram; and that 25 cubic centimeters of the article should contain free acids equivalent to not more than 2.5 cubic centimeters tenth normal acid; and its own standard of strength, quality, and purity was not plainly stated on the container thereof.

Misbranding was alleged for the reason that the statements borne on the labels regarding the article and the ingredients and substances contained therein, to wit, "Hydrogen Peroxide 10 Vol. 3% H_2O_2 * * *. This Hydrogen Peroxide is guaranteed to be of U. S. P. strength and purity when shipped," was false and misleading in that it represented that said article was hydrogen peroxid which contained 3 per cent by weight of absolute hydrogen peroxid, equivalent to 10 volumes of available oxygen, and that it conformed to the tests laid down in the said Pharmacopœia, whereas, in truth and in fact, it was not hydrogen peroxid which contained 3 per cent by weight of absolute hydrogen peroxid, equivalent to 10 volumes of available oxygen, and it did not conform to the tests laid down in said Pharmacopœia in that it contained 2.58 per cent (or 2.61 per cent) by weight of hydrogen peroxid, equivalent to 8.49 volumes (or 8.7 [8.59] volumes) of available oxygen, and in that 25 cubic

centimeters of the article contained free acids equivalent to 4.1 cubic centimeters tenth normal acid (or in that said article contained 0.04 gram total solids and that 25 cubic centimeters contained free acids equivalent to 5.5 cubic centimeters tenth normal acid), whereas said Pharmacopœia provides that the product should contain about 3 per cent by weight of absolute hydrogen peroxid corresponding to about 10 volumes of available oxygen; that the total solids [in 20 cubic centimeters] of said article should not exceed 0.03 gram, and that 25 cubic centimeters of the article should contain free acids equivalent to not more than 2.5 cubic centimeters tenth normal acid.

On June 7, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $10 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5577. Misbranding of "Buckeye Prime Cottonseed Meal." U. S. * * * v. The Buckeye Cotton Oil Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 8081. I. S. No. 19908-l.)

On March 31, 1917, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Buckeye Cotton Oil Co., a corporation, doing business at Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 28, 1916, from the State of Tennessee into the State of Kentucky, of a quantity of an article labeled in part, "Buckeye Prime Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude fiber (per cent)	14.88
Protein (N x 6.25) (per cent)	35.0
Nitrogen (per cent)	5.60
Ammonia (per cent)	6.80

Misbranding of the article was alleged in the information for the reason that the statements regarding the article and the ingredients and substances contained therein appearing on the label, to wit, "Guaranteed Analysis Protein 38.62 per cent minimum * * * Ammonia 7.50 per cent minimum Nitrogen 6.18 per cent minimum Crude Fibre 12 per cent maximum," were false and misleading in that they represented to purchasers that the article contained not less than 38.62 per cent of protein, 7.50 per cent of ammonia, and 6.18 per cent of nitrogen, and not more than 12 per cent crude fiber; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it contained not less than 38.62 per cent of protein, 7.50 per cent of ammonia, and 6.18 per cent of nitrogen, and not more than 12 per cent of crude fiber, when, in truth and in fact, it contained less than 38.62 per cent of protein, 7.50 per cent of ammonia, and 6.18 per cent of nitrogen, and more than 12 per cent of crude fiber.

On June 18, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5578. Misbranding of cottonseed meal. U. S. * * * v. The Union Seed & Fertilizer Co., a corporation. Plea of guilty. Fine, $25 and costs. (F. & D. No. 8101. I. S. No. 9168-l.)

On March 24, 1917, the United States attorney for the Western District of Tennessee, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Union Seed & Fertilizer Co., a corporation, doing business at Memphis, Tenn., alleging shipment by said company, in violation of the Food and Drugs Act, on or about December 9, 1915, from the State of Tennessee into the State of Maine, of a quantity of an article labeled in part, "Kineda Prime Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude fiber (per cent)	14.83
Protein (N x 6.25) (per cent)	34.1
Nitrogen (per cent)	5.46

Misbranding of the article was alleged in the information for the reason that the statement borne on the tags attached to the sacks regarding the article and the ingredients and substances contained therein, to wit, "Analysis Guaranteed Protein not less than 38.6% * * * Fibre not more than 12%," was false and misleading in that it represented that said article contained not less than 38.6 per cent of protein and not more than 12 per cent of fiber; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 38.6 per cent of protein and not more than 12 per cent of fiber, whereas, in truth and in fact, it contained less than 38.6 per cent of protein and more than 12 per cent of fiber, to wit, approximately 34.1 per cent of protein and 14.88 per cent of fiber.

On June 9, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5579. Misbranding of "Ice Wafers" and "Kakone Brand High Grade Cones." U. S. * * * v. The Independent Biscuit Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 8109. I. S. Nos. 1401–l, 4333–l.)

On March 30, 1917, the United States attorney for the District of New Jersey, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Independent Biscuit Co., a corporation, doing business at Jersey City, N. J., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 15, 1916, and July 20, 1915, from the State of New Jersey into the States of Massachusetts and Connecticut, respectively, of quantities of articles labeled in part, "Ice Wafers" and "Kakone Brand High Grade Cones," which were misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed that the "Ice Wafers" were colored with tartrazine, S. & J. No. 94, and croceine orange, S. & J. No. 13; and that the "Cones" were colored with tartrazine, S. & J. No. 94, and croceine orange, S. & J. No. 13.

Misbranding of the "Ice Wafers" was alleged in the information for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the box, to wit, "Colors used Guaranteed U. S. Certified," was false and misleading in that it represented to purchasers that the coloring material used in said article was a coloring material certified by the United States; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that the coloring material used in said article was certified by the United States, whereas, in truth and in fact, it was not, but contained and was mixed with a dye or dyes prohibited by the rules and regulations, promulgated by the United States, to be used in foods.

Misbranding of the "Kakone Brand Cones" was alleged for the reason that the statement concerning the article and the ingredients and substances contained therein, appearing on the label of the boxes, to wit, "Artificially Colored with U. S. Certified Colors," was false and misleading in that it represented to purchasers that the coloring material used in said article was certified by the United States; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that the article was colored with a coloring material which was certified by the United States, whereas, in truth and in fact, the said coloring material was not certified by the United States, but was mixed with a dye or dyes prohibited by the United States, in its rules and regulations, to be used in foods.

On May 1, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

5580. Adulteration of walnuts. U. S. * * * v. 137 Bags of Walnuts. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 323–c.)

On December 29, 1916, the United States attorney for the Eastern District of Virginia, acting upon a report by the Dairy and Food Commissioner of the State of Virginia, authorized by the Secretary of Agriculture, filed in the District Court of the United States for the said district a libel for the seizure and condemnation of 137 bags of walnuts, remaining unsold and in original, unbroken packages at Richmond, Va., alleging that the article had been delivered for shipment on or about December 29, 1916, by J. R. Council & Co., Inc., Norfolk, Va., and was in the course of transportation from the State of Virginia into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On January 13, 1917, the said J. R. Council & Co., claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of costs of the proceedings and execution of a bond in the sum of $1,500, in conformity with section 10 of said act.

C. F. Marvin, *Acting Secretary of Agriculture.*

5581. Adulteration of beans. U. S. * * * v. 1,000 Sacks * * * of White Beans. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 329–c.)

On March 28, 1917, the United States attorney for the District of Nebraska, acting upon a report by the State Pure Food Commissioner of Nebraska, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1,000 sacks of white beans, alleging that the article had been shipped between the dates of June 19, 1916, and January 6, 1917, by Post Bros., from West Hammond, Ill., and Edmore, Mich., and transported from the States of Illinois and Michigan into the State of Nebraska, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a filthy and decomposed vegetable substance.

On April 27, 1917, the First National Bank of Hammond, Ind., claimant, having filed an appearance and made application for the release of the product, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

5382. Adulteration and misbranding of beans with tomato sauce. U. S. * * * v. 467 Cases of Beans with Tomato Sauce. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 335–c.)

On May 14, 1917, the United States attorney for the Northern District of Ohio, acting upon a report by the Commissioner of Health of Cleveland, Ohio, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 467 cases of beans with tomato sauce, alleging that the article had been shipped on or about March 6, 1917, by D. E. Foote & Co., Baltimore, Md., and transported from the State of Maryland into the State of Ohio, and charging adulteration and misbranding in violation of the Food and Drugs Act. The article was labeled in part, "Our Leader Brand Beans With Tomato Sauce * * *."

Adulteration of the article was alleged in the libel for the reason that other substances had been substituted for the beans the cases and cans were represented by the labels and branding to contain, to wit, soya beans, which are inferior, cheaper, and radically different from the standard article of food known as beans by the public, said standard beans being botanically known as the *Phaseolus vulgaris*, whereas the said soya beans are botanically known as the *Glycine hispida*, being an inferior article of food, containing excessive quantities of oil and other elements, and of inferior value and fitness for human food, and commonly used as an article of stock feed and not for human food,[1] and for the further reason that other substances had been substituted for tomato sauce therein, and that what purported to be tomato sauce therein was practically devoid of tomato substance and the qualities of tomato sauce, and an imitation substituted therefor, thereby lowering its quality, strength, and value.

Misbranding of the article was alleged for the reason that the labels on the cases and cans were false and misleading, in that they indicated that the beans were put up in tomato sauce, when, in truth and in fact, they were put up in a compound or mixture composed of other substances with scarcely a trace of tomato; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser thereof in that it was composed of soya beans which are commonly used for stock feed, treated and processed and put up in such a manner as to resemble beans commonly known and used as a standard article of food; and for the further reason that the labels on the cases and cans bore a statement, design, and device regarding the contents thereof and the ingredients and substances contained therein which was false and misleading in that it was calculated, designed, and devised to deceive the purchaser by leading him and inducing him to believe that they contained standard beans, put up in standard tomato sauce, when, in truth and in fact, they contained soya beans processed and treated so as to resemble standard beans in appearance, and instead of tomato sauce, a mixture of substances other than tomato had been substituted.

On June 8, 1917, the Higgins-Babcock-Hurd Co., Cleveland, Ohio, claimant, having therefore filed its answer admitting the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the product should not be reshipped in interstate commerce, nor sold and disposed of unless properly labeled to show its true character.

C. F. Marvin, *Acting Secretary of Agriculture.*

[1] This action was reported directly to the United States attorney by State officials. In view of a possible erroneous inference from the allegations, the department states that it considers soya beans to be one of the most nutritious of the legumes when used as human food.

5583. Adulteration and misbranding of beans with tomato sauce. U. S. * * * v. 1,000 Cases of Beans. Product ordered released on bond. (F. & D. No. 338–c.)

On April 3, 1917, the United States attorney for the Eastern District of Michigan, acting upon a report by the Dairy and Food Commissioner of the State of Michigan, authorized by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1,000 cases of beans, remaining unsold in the original unbroken packages at Lansing, Mich., alleging that the article had been shipped on March 14, 1917, by D. E. Foote & Co. (Inc.), Baltimore, Md., and transported from the State of Maryland into the State of Michigan, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that other substances, to wit, soya beans, which are commonly used as an article of stock feed and not for human food,[1] had been substituted for the beans the cases and cans were represented by the labels and branding to contain; and for the further reason that other substances, to wit, gelatin, starch, spices, and condiments had been substituted for tomato sauce therein, and that what purported to be tomato sauce therein was practically devoid of tomato substance and of the qualities of tomato sauce, and the substances aforesaid were substituted therefor, thereby lowering its quality, strength, and value.

Misbranding of the article was alleged for the reason that the labels on each case and can were false and misleading, in that such labels indicated that the beans were put up in tomato sauce, when, in truth and in fact, they were put up in a compound or mixture composed of gelatin, starch, spices, and condiments with scarcely a trace of tomato; and for the further reason that they were labeled and branded so as to deceive and mislead the purchaser thereof in that they were composed of soya beans, which are commonly used for stock food, treated and processed and put up in such a manner as to resemble beans commonly known and used as a standard article of food; and for the further reason that the labels on each case and can bore a statement, design, and device regarding the contents of the cans and cases, and the ingredients and substances contained therein, which were false and misleading in that they were calculated, designed, and devised to deceive the purchaser by leading him and inducing him to believe that the cases and cans contained standard beans, put up in standard tomato sauce, when, in truth and in fact, they contained soya beans, processed and treated so as to resemble standard beans in appearance, and instead of a tomato sauce, a substance composed of gelatin, starch, spices, and condiments.

On April 11, 1917, the said D. E. Foote & Co., having filed a claim for the release of the product, it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $4,200, in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

[1] This action was reported directly to the United States attorney by State officials. In view of a possible erroneous inference from the allegations, the department states that it considers soya beans to be one of the most nutritious of the legumes when used as human food.

5584. Misbranding of "Balsamo-Antifimico." U. S. * * * v. Francisco Matanzo, Rafael Loubriel, and Juan Loubriel (Leirbuol Co.). Pleas of nolo contendere. Fine, $75 and costs. (F. & D. No. 5402. I. S. No. 4709-k.)

On December 6, 1916, the United States attorney for the district of Porto Rico, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Francisco Matanzo, Rafael Loubriel, and Juan Loubriel, copartners, trading as the Leirbuol Co., San Juan, P. R., alleging that said defendants did, at San Juan, P. R., on July 7, 1915, offer for sale and sell a quantity of an article labeled in part, "Balsamo-Antifimico," which was misbranded, in violation of the Food and Drugs Act as amended.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product consisted essentially of water, alcohol, glycerin, and plant extractive matter. There were no indications of alkaloids, chloroform, acetanilid, guaiacol, creosote, terpin hydrate, or turpentine.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it as a remedy for tuberculosis, a preventive of tuberculosis, and a remedy for bronchitis and catarrh, when, in truth and in fact, it was not.

On January 23, 1917, the defendants entered pleas of nolo contendere to the information, and the court imposed a fine of $75 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5585. Adulteration and misbranding of Catawba grape juice. U. S. * * * v. The John C. Meier Grape Juice Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 5928. I. S. No. 11030-m.)

On May 12, 1917, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the John C. Meier Grape Juice Co., a corporation, Silverton, Ohio, alleging the shipment by said company, in violation of the Food and Drugs Act, on or about September 5, 1916, from the State of Ohio into the State of Illinois, of a quantity of an article labeled in part, "Catawba Grape Juice," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Specific gravity at 15.6° C/15.6°C	1.0756
Alcohol, refractometer (per cent by volume)	0.44
Solids (calculated) (grams per 100 cc)	19.82
Nonsugar solids (grams per 100 cc)	1.91
Sucrose by copper: None.	
Reducing sugar (as invert after evaporation before inversion) (grams per 100 cc)	17.94
Ash (gram per 100 cc)	0.18
Brix at 17.5° C	18.20
Acidity as tartaric (gram per 100 cc)	0.96
Total tartaric acid (gram per 100 cc)	0.46
Free tartaric acid (gram per 100 cc)	0.23
Cream of tartar (gram per 100 cc)	0.20
Straw-colored, bright, slight sediment.	
The product contains added water.	

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, water, had been substituted in part for Catawba grape juice, which the article purported to be; and for the further reason that water had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength.

Misbranding was alleged for the reason that the statement concerning the article and the ingredients and substances contained therein, appearing on the label, to wit, "Grape Juice," was false and misleading in that it represented to purchasers that the article was grapejuice; and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it was grapejuice, whereas, in truth and in fact, it was not, but was a mixture of grapejuice and water.

On June 27, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5586. Misbranding of "Mountain Rose Tonic Tablets and Herbaline." U. S. * * * v. Springsteen Medicine Co., a corporation. Plea of nolo contendere. Fine, $100 and costs. (F. & D. No. 6021. I. S. No. 10117–e.)

On September 17, 1915, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Springsteen Medicine Co., a corporation, Cleveland, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about March 25, 1913, from the State of Ohio into the State of Michigan, of a quantity of an article labeled in part, "Springsteen's Mountain Rose Tonic Tablets and Herbaline," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

> The "Mountain Rose" tablets contain boric acid, tannin (or gallic acid), a zinc compound (possibly zinc subgallate), unidentified alkaloidal material, vegetable extractive including resinous material, sugar (probably lactose), acid insoluble material (apparently talc).
>
> The "Mountain Rose Herbaline" is essentially an ointment potassium carbonate, 15.5 per cent; strychnine, laxative plant extractive matter, resinous material, and sugar.
>
> The "Mountain Rose Herbaline" is essentially an ointment with a petrolatum base containing oil of eucalyptus, a thujone, containing oil such as tansy, and a small quantity of material, insoluble in petroleum ether but somewhat soluble in ether or chloroform and not an alkaloid.

It was alleged in substance in the information that the articles were misbranded for the reason that certain statements appearing on the label falsely and fraudulently represented said articles to be effective as a treatment for the cure of all diseases peculiar to women, when, in truth and in fact, the articles composing the so-called treatment were not, either separately or together, so effective; for the further reason that certain statements appearing on the label of the large carton falsely and fraudulently represented the article as a cure for prolapsus, retroversion, retroflexion, anteversion, anteflexion, painful menstruation, excessive menstruation, suppressed menstruation, leucorrhea, and in fact all diseases of the female organs of generation, when, in truth and in fact, it was not; and for the further reason that certain statements appearing on the label of the small carton falsely and fraudulently represented it as a remedy for quinsy, sore throat, and diphtheria, when, in truth and in fact, it was not. It was alleged, in substance, that the tablets were misbranded for the further reason that certain statements included in the booklet accompanying said article falsely and fraudulently represented it as a cure for the diseases peculiar to women, effective as a specific for every form of female trouble, and in removing epilepsy, as a cure for latroversion, retroversion, and anteversion, as a remedy for leucorrhea, cessation of menstruation, for corroding ulcer of the uterus, and cauliflower excrescence of the uterus, as a cure for dysmenorrhea, sterility or barrenness, uterine catarrh, inflammation of the womb, profuse menstruation, inflammation of the ovaries, as a preventive of ovarian dropsy, as a cure for prolapsus of the womb, ulceration of the neck of the womb, enlargements or hardening of the womb, hysteria, ulceration of womb, and all forms of displacements, many forms of uterine tumors, painful menstruation, and congestion of the ovaries, when, in truth and in fact, it was not. Mis-

branding of the "Herbaline," was alleged, in substance, for the reason that certain statements included in the booklet accompanying the article falsely and fraudulently represented it as a remedy for quinsy, sore throat, and diphtheria, effective to relieve the many annoying symptoms resulting from uterine disease, and effective if employed externally at the same time with "Mountain Rose" as a relief for abnormal conditions taken on by the lymphatics of the ovaries, fallopian tubes, broad ligaments, and parietes of the abdomen, and effective when used in connection with "Mountain Rose," as a specific for common ovarian ailments, when, in truth and in fact, it was not. Misbranding of the tablets was alleged for the further reason that the statement included in the booklet, to wit, "Our Constitutional Tonic Tablets * * * will cure all diseases of the skin," falsely and fraudulently represented the article as a cure for all diseases of the skin, when, in truth and in fact, it was not. Misbranding of the articles was alleged in substance for the further reason that certain statements included in the booklet aforesaid falsely and fraudulently represented the articles to contain ingredients or medicinal agents effective as a cure for prolapsus, ovarian, and uterine trouble, polypus growth on the uterus, chronic inflammation and enlargement of the ovaries, inflamed ovaries, barrenness, prolapsus uteri, and cancer of the breast, when, in truth and in fact, it was not.

On January 13, 1916, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5587. Adulteration of evaporated apples. U. S. * * * v. 20 Boxes of Evaporated Apples. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 6161. I. S. No. 11881-k. S. No. C-138.)

On December 8, 1914, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 boxes of evaporated apples, remaining unsold in the original unbroken packages at Meridian, Miss., alleging that the article had been shipped by J. W. Teasdale & Co., St. Louis, Mo., and transported from the State of Missouri into the State of Mississippi, the shipment having been received on or about September 16, 1914, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was badly infested with worms, bugs, and worm excreta, and was old, stale, and sour.

On March 14, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold at public auction by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5588. Supplement to Notice of Judgment No. 4842. Misbranding of "Abbott Bros. Rheumatic Remedy." U. S. * * * v. Abbott Brothers Co., a corporation. Judgment of conviction of lower court affirmed by the Circuit Court of Appeals. (F. & D. No. 6190. I. S. No. 7945-e.)

At the conclusion of the trial in the above-stated case the defendant corporation prayed an appeal to the United States Circuit Court of Appeals for the Seventh Circuit, and the said appeal was granted. On September 1, 1916, the defendant company filed its writ of error in furtherance of said appeal, and on March 8 and 27, 1917, briefs were filed by the respective parties. On May 22, 1917, the judgment of conviction of the lower court was affirmed, as will more fully appear from the following decision of the Circuit Court of Appeals:

KOHLSAAT, ALSCHULER and EVANS, *Circuit Judges.*

Writ of error to review a judgment entered against Abbott Brothers Company, a Corporation, upon conviction for violation of the Pure Food and Drugs Act.

Per Curiam. The contention of the plaintiff in error that the information charging it with having violated the Pure Food and Drugs Act, bearing the signature of the District Attorney for the Northern District of Illinois, and attached to which information and made a part of it were four affidavits sworn to before notaries public, is insufficient to support a judgment because of the insufficiency of the acknowledgment, must be rejected. *Weeks* v. *United States*, 216 Fed. 292; *United States* v. *Adams Express Co.*, 230 Fed. 531.

No warrant for arrest having been sought, the information signed by the United States District Attorney was sufficient without any verification and without any supporting affidavits. It was unnecessary for the District Attorney, who signed the information in his official character, to assert in the body of that document that he informed the Court upon his oath as a Government official of the facts therein set forth. It will be presumed he acted on his oath as an officer of the Government.

Nor do we think the plaintiff in error is in a position to raise this question for the first time in this court.

Defects such as are here complained of, are in any event waived if not raised by suitable objection before trial. *People* v. *Murphy*, 56 Mich. 546; *Bryan* v. *State*, 41 Fla. 643; *State* v. *Osborne*, 54 Kan. 473; *State* v. *Brown*, 181 Mo. 192; *Johnson* v. *State*, 53 Neb. 103; *State* v. *Pancoast*, 5 No. Dak. 516; *Hammond* v. *State*, 3 Wash. 171. See also on waiver of informalities *Garland* v. *State of Washington*, 232 U. S. 642.

Judgment is

AFFIRMED.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5589. Misbranding of macaroni. U. S. * * * v. 225 Cases of Paste. Decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 6210. I. S. No. 17464-k. S. No. W-29.)

On January 8, 1915, the United States attorney for the Northern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 225 cases of paste (macaroni), remaining unsold in the original unbroken packages at Oakland, Cal., alleging that the article had been shipped on or about December 18, 1914, by the Western Macaroni Manufacturing Co., Salt Lake City, Utah, and transported from the State of Utah into the State of California, and charging misbranding in violation of the Food and Drugs Act.

Misbranding of the article was alleged in the libel for the reason that it was labeled and packed in such a manner as to deceive and mislead the purchaser into the belief that it was a product of Italian manufacture, whereas, in truth and in fact, it was not, but was manufactured by the Western Macaroni Manufacturing Co., Salt Lake City, Utah.

On January 28, 1915, the said Western Macaroni Manufacturing Co. having filed a claim for the product, it was ordered by the court that the product should be released to said claimant upon payment of the costs of the proceedings and the execution of a bond in the sum of $350, in conformity with section 10 of the act, conditioned in part that the product should be relabeled to comply with the Food and Drugs Act.

C. F. Marvin, *Acting Secretary of Agriculture.*

5590. Adulteration of chestnuts. U. S. * * * v. Peter Descalzi, John B. Descalzi, Louise J. Descalzi, and Angelo Descalzi (Descalzi Fruit Co.). Pleas of nolo contendere. Fine, $25 and costs. (F. & D. No. 6257. I. S. No. 4896–h.)

On November 12, 1915, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Peter Descalzi, John B. Descalzi, Louise J. Descalzi, and Angelo Descalzi, trading as the Descalzi Fruit Co., Pittsburgh, Pa., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about October 27, 1913, from the State of Pennsylvania into the State of West Virginia, of a quantity of chestnuts which were adulterated.

Examination of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Wormy, badly decayed, or very moldy (per cent by weight)	56.7
Slightly decayed or moldy (per cent by weight)	12.0
Passable (per cent by weight)	31.3

Adulteration of the article was alleged in the information for the reason that it consisted wholly or in part of a filthy and decomposed vegetable substance.

On November 12, 1915, the defendants entered pleas of nolo contendere to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5591. Misbranding of "Crown Skin Salve" and "Crown Pile Cure." U. S. * * * v. Grace Medical Co. Plea of guilty. Fine, $30 and costs. (F. & D. No. 6290. I. S. Nos. 4531-e, 4532-e.)

On November 29, 1915, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Grace Medical Co., a corporation, Des Moines, Iowa, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about February 17, 1913 (2 shipments), from the State of Iowa into the State of Missouri, of quantities of articles labeled in part, "Crown Skin Salve" and "Crown Pile Cure," which were misbranded.

Analysis of a sample of the "Skin Salve" by the Bureau of Chemistry of this department showed that it was a solid ointment, having an odor of balsam and a camphoraceous odor indicating a small quantity of camphor or menthol; and containing the following substances:

Mercuric oxid (per cent)	7.6
Calomel (per cent)	1.42
Petrolatum (approximate per cent)	85.0
Volatile material at 100° C. (per cent)	5.8

Misbranding of the "Skin Salve" was alleged in the information for the reason that the statements appearing on the label of the carton to wit, "This remedy * * * is guaranteed to contain no harmful or injurious ingredients. It can be used with the utmost confidence for summer and winter Rashes of Infants * * *," were false and misleading in that they indicated to purchasers that the article did not contain ingredients which would render the same harmful or injurious when used in the treatment of summer and winter rashes of infants, when, in truth and in fact, the article contained, to wit, 7.6 per cent of mercuric oxid, a poisonous and deleterious ingredient, which might render the article harmful or injurious when so used. It was alleged in substance that the article was further misbranded for the reason that certain statements appearing on the label of the carton falsely and fraudulently represented it as a remedy for all affections of the skin and scalp and as a speedy, positive and permanent cure for eczema, salt rheum, erysipelas, and dandruff, when, in truth and in fact, it was not.

Analysis of a sample of the "Pile Cure" by said Bureau of Chemistry showed that it consisted of fat, chiefly cocoa fat, tannic acid, atropine, alum, and talc.

It was alleged in substance in the information that the "Pile Cure" was misbranded for the reason that certain statements appearing on the labels falsely and fraudulently represented it as a cure for piles, when, in truth and in fact, it was not.

On December 11, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $30 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5592. Misbranding of "King of the World and Family Liniment." U. S. * * * v. Gilbert L. Vrooman. Plea of guilty. Fine, $2. (F. & D. No. 6297. I. S. No. 8861–e.)

On October 27, 1915, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Gilbert L. Vrooman, Pierrepont Manor, N. Y., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about February 5, 1913, from the State of New York into the State of Vermont, of a quantity of an article labeled in part, "King of the World and Family Liniment," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	84.36
Tincture of opium (minims per ounce)	6.88
Capsicum: Present.	
Safrol: Present.	
Methl alcohol: Absent.	

It was alleged, in substance, in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for rheumatism in all its forms, cholera, dysentery, congestion of the lungs, when, in truth and in fact, it was not. Misbranding was alleged, in substance, for the further reason that certain statements included in the circular or pamphlet accompanying the article falsely and fraudulently represented it as a remedy for piles, cholera infantum, diphtheria, heart trouble, pneumonia, and congestion of the lungs, and grippe, and as a cure for pleurisy and palsy, when, in truth and in fact, it was not.

On November 4, 1915, the defendant entered a plea of guilty to the information, and the court imposed a fine of $2.

C. F. Marvin, *Acting Secretary of Agriculture.*

5593. Misbranding of "Parmint." U. S. * * * v. International Laboratories, a corporation. Plea of guilty. Fine, $200. (F. & D. No. 6356. I. S. Nos. 4815-k, 10504-l.)

On August 31, 1916, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the International Laboratories, a corporation, Binghamton, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about June 3, 1915, and September 11, 1915, from the State of New York into the States of Pennsylvania and Illinois, respectively, of quantities of an article labeled in part, "Parmint," which was misbranded.

Analysis of a sample of the article from the shipment of June 3, 1915, by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	15.0
Chloroform (minims per ounce)	1.95
Glycerin (grams per 100 cc)	14.9
Volatile oil (per cent by volume)	3.4
Alkaloids (gram per 100 cc)	0.03

Included among the ingredients mentioned above are oil of peppermint and quinine; the product is colored with cochineal.

Analysis of a sample of the article from the shipment of September 11, 1915, showed the following results:

Alcohol (per cent by volume)	9.7
Chloroform (minim per ounce)	0.9
Glycerin (grams per 100 cc)	33.5
Volatile oil (per cent by volume)	3.2
Alkaloid (gram per 100 cc)	0.0318

Included among the ingredients mentioned above are oil of peppermint, oil of turpentine, camphoraceous oil, and quinine; the preparation is colored with cochineal and contains a trace of vegetable extractives.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements included in the circular or pamphlet accompanying it falsely and fraudulently represented it as a cure for catarrh, catarrhal deafness, catarrh of the stomach, catarrh of the bowels, lung troubles, asthma, bronchitis, and chronic cough, when prepared and used according to directions, when, in truth and in fact, it was not, when prepared and used according to directions or when prepared or used in any other manner.

On April 3, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $200.

C. F. Marvin, *Acting Secretary of Agriculture.*

5594. Misbranding of "Sulphurro." U. S. * * * v. C. M. C. Stewart Sulphur Co. (Inc.), a corporation. Tried to the court and a jury. Verdict of guilty. Fine, $150. (F. & D. No. 6366. I. S. No. 6230–e.)

On July 12, 1915, the United States attorney for the Western District of Washington, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the C. M. C. Stewart Sulphur Co. (Inc.), a corporation, Seattle, Wash., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about September 14, 1912, from the State of Washington into the State of Nebraska, of a quantity of an article labeled in part, "Sulphurro," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Total solids by drying (grams per 100 cc)	8.87
Ash (grams per 100 cc)	6.54
Calcium (grams per 100 cc)	1.428
Sulphur (grams per 100 cc)	4.212

Potassium salts: None detected.
Test for sodium chlorid: Positive.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on the label falsely and fraudulently represented it as a remedy for rheumatism, asthma, goiter, eczema, and all stomach, bowel, kidney, skin, and blood diseases, when, in truth and in fact, it was not. Misbranding was alleged in substance for the further reason that certain statements included in the booklet accompanying the article represented it as effective in the treatment of diabetes when used according to directions, when, in truth and in fact, it was not, when used according to directions or when used in any other manner.

On October 12, 1915, the case came on for trial before the court and a jury, and, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court (Neterer, *D. J.*):

In this case, members of the jury, you are not concerned about the wisdom of this act of Congress. The act is passed and you are not concerned with that other than to determine what the fact is with relation to this particular case. You are only concerned with the facts in this case and you must determine what the facts are with relation to the issue which is formed by the information filed and the plea entered by the defendant. You are to approach the issue with open minds, and consider all of the evidence which has been presented fairly and not to be concluded with relation to any fact by reason of any sympathy or prejudice of any kind, but are simply to pass upon this issue fairly and impartially as twelve honest persons, and determine what the real truth is with relation to the issue here, and what the facts in this case really establish, by the witnesses who have testified.

The issue is not a complex one. The information is rather lengthy, and I will not read it. You can read that when you go to your jury room. In substance, it charges the defendant company with having violated this drug act which prohibits the false branding of any drug so that it may mislead persons to believe a different thing is contained in it than the facts really justify, or to lead to conclusions with relation to certain properties which it does not contain, which branding is made knowing it to be false and made for the fraudulent purpose of misleading persons who might read this label.

The defendant has entered a plea of not guilty to this indictment and that places in issue every material allegation in the indictment, and the burden of proof is upon the government to establish each material allegation beyond every reasonable doubt.

It has been stipulated that the drugs charged in the indictment to have been shipped from this state to Nebraska in interstate commerce were shipped, so that you are not concerned with that. I think about the only issue you

have to determine is whether this drug was misbranded, and whether these statements are falsely and fraudulently made as charged in the information. These terms all have their common meaning. There is no technical meaning applied to the terms used, and therefore it is not necessary for me to define what the word "false" is intended to mean, or what "fraudulently" is intended to mean. It simply means exactly what the terms imply and which you all must know.

The information, as I have stated, charges misbranding of this drug called Sulphurro. The test of this branding is what the statements appearing on the label means to the ordinary man. In other words, what the ordinary man reading the label would understand as to the properties of the drug Sulphurro and what curative effects it had. And if you are convinced by the evidence in this case that there was not anything there to mislead any person, then the further question as to whether Sulphurro can or will cure the diseases for which it is branded to cure and for which parties have purchased it, must be determined. In this case a number of witnesses have testified; on the part of the Government some medical experts testified with relation to the effect of certain drugs on the human system, and certain properties contained in such drugs. On the part of the defense, some thirty-five of thirty-six witnesses have testified with relation to the curative effects which have resulted to them individually from the use of this drug. I do not think that any witness for the government testified that they purchased this for a certain purpose or for certain curative effects and did not obtain them. The testimony of the government is confined to the medical experts.

In weighing the evidence in this case, you will take into consideration all of the facts and all of the circumstances surrounding these several witnesses. The mere fact that a witness states a conclusion, that don't necessarily bind you to that conclusion, unless you are convinced from the evidence offered and admitted, taking into consideration the surroundings and environment of the witnesses who have testified and the facts upon which the conclusion is based; and you will take into consideration all of those things and then will make your deductions from all of these facts. Some witnesses have testified here who are termed expert witnesses. The mere fact that they have testified to conclusions with relation to what they believe to be the fact, is not conclusive upon you. While their testimony has persuasive effect and should be considered by you with relation to all the facts and circumstances detailed by the witnesses, yet their conclusions must be based upon facts disclosed by the evidence which would justify the conclusions, and you will take into consideration all of these facts and determine whether the conclusion is justified upon the facts upon which they are predicated. With relation to other witnesses testifying, who are not experts, but who have testified with relation to certain curative effects which they have received from the use of this drug, you will take into consideration their testimony as to their ailments and what effect the drug had upon them and what curative effects they experienced by using it, and if you should find from the evidence in this case, or if you have a reasonable doubt upon that question as to whether the parties who used this drug received the curative effects or some remedial effect, as claimed upon the label found upon the bottle and likewise the printed matter that was enclosed with this drug as it was sent in interstate commerce, then, I say, if you believe from all of these facts that it did have the curative effect or they did get the remedial effect which these labels and literature showed, then of course you will find the defendant not guilty in this case. But if you find, beyond a reasonable doubt, from all of the evidence which has been offered and admitted, that this label is false and that the literature which was enclosed with this which portrayed the curative effects which this medicine would have was false, and the statements contained therein made for the false and fraudulent purpose of inducing persons to buy this drug, then of course you would find the defendant in this case guilty as charged in this indictment.

The defendant is presumed to be innocent until proven guilty by the evidence which has been offered and admitted, and this presumption continues throughout the entire trial; and you will resolve any reasonable doubt that you may have in this case with relation to any fact which is in issue here in favor of the defendant.

It isn't necessary that the Government prove that every statement with relation to the curative effect of each ailment made upon the label is false. If the Government has established any of these statements to be false and fraudulent and made for the purpose of fraudulently misleading the public, that would be sufficient.

You will take all of the evidence into consideration which has been offered and admitted, and conclude with relation to the fact as I have indicated a moment ago as twelve fair minds with an honest purpose of arriving at a just conclusion so that justice may be done between the government and this defendant.

A reasonable doubt for your consideration in this evidence is such a doubt as an ordinarily reasonable man would entertain in considering any matter of like concern or import to him as that before the jury is to the defendant, and which would make him pause or hesitate in arriving at his determination and conclusion. It is a doubt for which you can give a reason. It is not merely speculative, imaginary or conjectural. If a juror can say that he has an honest conviction of the proof of the charge, then of course he would be convinced beyond a reasonable doubt. If he can say to himself that he feels to a moral certainty that the fact is established, then he is satisfied beyond a reasonable doubt. But if you can not say that, then of course he has a reasonable doubt which he must resolve in favor of the defendant.

By the COURT. Are there any omissions or exceptions?

By Mr. FRYE. We have none, Your Honor.

By the GOVERNMENT. We have no exceptions.

By the COURT to the jury. It will require your entire number to agree upon a verdict in this case. Two forms will be submitted. If you believe that the charge has been established beyond a reasonable doubt, this will be your verdict:

"We, the jury in the above entitled cause, find the defendant guilty of a violation of the act of Congress of June 30, 1906, known as the Food and Drugs Act, as charged in the indictment."

And if you have a reasonable doubt, this will be your verdict:

"We, the jury in the above-entitled cause, find the defendant not guilty."

Whichever verdict you find you will cause to be signed by your foreman, whom you will elect immediately upon retiring to the jury room.

This information will be sent with you to the jury room, but it is not to be considered as evidence in the case, but is simply a paper charge to which the defendant has entered a plea of not guilty.

You may swear the bailiffs.

The jury thereupon retired; and after due deliberations returned into court, and the foreman announced that they were unable to agree upon a verdict; and the jury was discharged. On October 19, 1915, the case came on for retrial, and after the submission of evidence and argument by counsel the following charge was delivered to the jury by the court (Neterer, *D. J.*):

In this case, Gentlemen of the Jury, you have been accepted by both sides as twelve fair minded men, unprejudiced, without any preconceived notion as to what the facts in this case are to determine the issue which is submitted. You have a distinct duty and function to perform in this case as a part of the machinery of the Government, as have also the attorneys in this case, for the United States, and for the defense, in that it is their duty to present the facts of their respective sides before you in a fair and full manner so that you may get a viewpoint from both sides; and your duty is to pass upon the facts as presented. That is your sole province and nobody can tell you what the facts are in this case, but this you must determine from the evidence offered and admitted. The duty of the Presiding Judge is to see that the case is fairly tried, exclude immaterial matters, and see that the case is orderly conducted, and advise you upon the questions of law applicable to the facts presented before you for your consideration. You are a part of the machinery of the Government here. The laws must be enforced and persons against whom complaints are made by the officers of the law must be given a fair trial; so you can very readily understand the importance of the functions you perform in this proceeding. You are the sole judges of the facts in this case. I can't tell you what a single fact is, and if I should refer to any fact, it is your duty to disregard it. It is not my purpose to impress upon you any opinion that I may have of any fact. You are the sole arbiters of the facts and must determine what the facts are upon the issue presented by the information filed in this case by the United States District Attorney and the plea of not guilty which has been entered by the defendant.

The issue is not a complex one, and it is made, as I have stated, by the information which has been filed by the United States District Attorney, and

the defendant's plea of not guilty. The plea of not guilty places in issue every material allegation in the information. In other words, it is a denial. By plea of not guilty the defendant denies all of the allegations in the information, and that places upon the Government the burden to prove every material allegation in the information beyond a reasonable doubt. This information you may take with you to the jury room when you retire. You may read it and see just what the charge is, but it is not to be considered as evidence in the case in any sense. The information is entirely too long for me to read to you now and I will leave that to you.

While the burden of proof is upon the Government to establish every material allegation of the information beyond a reasonable doubt, you understand, of course, that when admissions are made upon the trial by the defendant as to the truthfulness of a statement, no proof need be offered with regard to such admission or the fact that has been admitted. It has been admitted on behalf of the defendant that the drugs which are set out in the information were shipped from this State to the place named in the information, and were shipped in interstate commerce, so that no proof need be offered upon that allegation; and I think it has been admitted, if not formally, upon the argument, that Mr. Stewart is the agent of the defendant company, and likewise that the defendant company is a corporation. You will understand that corporations can only act through their agents and representatives, and that any representations made or any act done with relation to the charge in this information by Mr. Stewart is the act of the defendant corporation.

The only issue of fact in controversy in this case to be determined by you is whether the drug described in the information was misbranded. The test of this misbranding is what the statements appearing upon the label mean to the ordinary man, and when I refer to the label I mean likewise the circular or pamphlet which was enclosed in the package as it was transmitted in interstate commerce. In other words, what the ordinary man reading the label would understand as to what properties the drug Sulphuro contained or the curative or therapeutic effects it had. I will not attempt to define or set out the various ailments or physical disabilities which it is claimed the statements contained that this drug would cure, but these diseases or physical ailments you will understand to be such diseases or ailments as the public generally understood and the generally accepted meaning of these drugs by the public, and you are not confined in your deliberations in applying to these diseases the technical medical definition or term which has been scientifically limited by some of the witnesses. I have indicated the generally accepted understanding of the public as to what these terms mean and what physical disabilities they include, and you will apply the curative or therapeutic effect of the drug to the definition as generally understood. And you will also understand that it is not only necessary for the Government to show beyond every reasonable doubt that the statements that were made were false in fact and that the drugs did not have the curative or therapeutic effects that the statements attributed to them, but the Government must further prove beyond a reasonable doubt that the statements are fraudulent and that the defendant knew them to be false, and that they were falsely made with the intent to deceive the public or induce the purchaser to buy them because of such statements. And if you believe that the statements were false and the defendant knew they were false and made them with the intent to deceive the purchaser, or if, acting as an ordinary prudent man would act under like circumstances, he should have known, that the statements were false, then you will find that the statements were falsely made as charged in the indictment, and under such circumstances your verdict should be guilty. On the other hand, if you have a reasonable doubt as to whether the statements were false or whether they were fraudulently made, then it would be your duty to acquit the defendant. So that the mere falsity of the statements would not be sufficient to justify you in returning a verdict of guilty, but in addition to that it requires the further proof that the defendant made them knowingly and with intent to deceive and defraud.

I hardly think it is necessary for me to enter into any definition of these various terms, but suffice it to say that a fraudulent statement is a statement which is recklessly made without knowledge of its truth, but which is really false, and an unqualified statement of that which one does not know to be true, or has no reasonable ground to believe to be true, is equivalent to a statement of that which one knows to be false.

In determining whether the defendant knew the statements were false and fraudulently made, you will take into consideration all of the evidence which was offered and admitted surrounding the placing of this drug upon the market,

which led to placing it in interstate commerce as charged in the information, and you will consider all of the testimony with regard to these statements that is before you from the inception, dealing or treating with this drug up to the time of the filing of this information, the date of which you will find endorsed upon the cover of the information, and from all of these statements as disclosed by the evidence bearing on the conduct of the defendant with relation to this drug, determine whether it acted as an honest, fair minded, average man would act under like circumstances, and whether it had reason to believe, acting as a reasonably prudent man would act under such circumstances, that this drug did contain the curative or therapeutic effects which are attributed to it in the statements, and when I say it, referring to the defendant, I mean Mr. Stewart, who seems to have had the management and control of the concern.

In this case some eight physicians have testified, among whom are some specialists, as you will remember, as well as a chemist or analyst, who has testified with relation to the ingredients of the drug in question. The testimony of the Government is all confined to expert medical evidence, except the testimony of the chemist or analyst. They have testified with relation to the several ingredients contained in this drug as disclosed by the evidence and the curative effect of the drugs separately and likewise the therapeutic effect of the drugs taken together, based upon their experience as practitioners and likewise upon their reading in medical journals and treatises by eminent doctors. The defendant has presented to you some thirty-five or thirty-six persons who have testified that they have been treated by this drug Sulphuro and have been cured of various ailments. Some of them say they have been afflicted for years and have recovered, so they say, their health entirely, and have stated to you what they understand that they were afflicted with. You will weigh all of the evidence which has been presented here. It is not my purpose, nor do I intend to enter into an analysis of the testimony, or give you a synopsis of my recollection of the evidence. The evidence has all been reviewed by counsel for the Government and the defendant. They have given you their version of the testimony and the conclusions that should be drawn from the testimony of the witnesses, and while you are not bound by the statements or the recollection of the attorneys for the respective parties, you should give these statements and their version of the testimony consideration. Nor are you bound by the conclusions of the witnesses upon the testimony which has been offered and admitted upon either side. You will weigh the evidence in this case very carefully. You are the sole judges of the facts in this case and the weight that should be accorded to the testimony, and you must determine what that is. You are likewise the sole judges of the credibility of the witnesses who have testified before you, and in determining the weight or credit which you desire to give to the testimony of any witness, you will take into consideration the demeanor of the witness upon the witness stand; the opportunity of the witness for knowing the things concerning which he has testified; the interest or lack of interest of the various witnesses in the result of this controversy; the apparent frankness or truthfulness of the witnesses; the reasonableness of the stories of the witnesses who have testified, and from all of these determine which of the witnesses impressed you the more strongly of telling the truth. In considering the conclusions of the witnesses, both the medical experts and likewise the witnesses on the part of the defendant, with relation to the therapeutic effect of the medicine or with relation to the illness with which the witnesses on the part of the defendant claimed to be afflicted, you will determine whether the conclusions are based upon facts which have been disclosed by the evidence as you understand it, and as it is conveyed to you, and the truthfulness of the conditions as portrayed by the witnesses, and while these conclusions are perhaps somewhat persuasive and should be considered by you, yet the facts upon which they are based should be closely scrutinized by you, and determine whether they are true and justified from all of the circumstances developed upon this trial, and apply to each witness who has testified before you the same test you would apply to any person in the ordinary affairs of life the truthfulness or falsity of whose statements might be under consideration by you, and determine the credit or the weight that should be given to the statements that have been made upon this trial.

The defendant, under the plea of not guilty, is presumed to be innocent until proven guilty beyond a reasonable doubt, and this presumption continues throughout the entire trial and until you are convinced from the evidence beyond every reasonable doubt of its guilt. And in this connection, I would say that a reasonable doubt for a trial juror is just such a doubt as the word

implies. It is a doubt for which you can give a reason. When a juror can say to himself that he is convinced to a moral certainty of the guilt of the defendant, then he would be convinced beyond a reasonable doubt. It is not a doubt which is speculative, imaginary, or conjectural, but is such a doubt as a man of ordinary prudence, sensibility, and decision would have in determining an issue of like concern to himself as that before the jury is to the defendant, which would make him pause or hesitate in arriving at his conclusion.

In this case, while the Government must prove beyond every reasonable doubt the material allegations of the information, this need not be done with relation to every disease which is named upon this label or in the statement which is included within this package as it was transmitted in interstate commerce. If you believe from the evidence that this drug has many curative qualities and will cure many of the diseases which are named on the label or the package, but will not cure others, and believe beyond a reasonable doubt that there are some ailments named upon the label or the literature or statement enclosed with the package, as charged in the information, concerning which the statements were false and known to be false at the time they were made, and were made for the fraudulent purpose as charged in the information—if you are so convinced beyond a reasonable doubt of the falsity of the statements with relation to one of the diseases, then it would be sufficient to support a verdict of guilty, and if you are so convinced, your duty would be to return a verdict of guilty. But if you have a reasonable doubt as to all of these, then your duty would be to return a verdict of not guilty.

You will approach the issue in this case as twelve fair minded men, eliminating from your minds any prejudice that may be there and dispose of this case upon the evidence presented and not be influenced by sentiment or prejudice of any kind or character.

I think I should say in these instructions that this case was tried before during this term before another jury, and you undoubtedly have learned in some way that the other jurors did not agree. I think I should say that in this case additional witnesses have been presented on the part of the Government and likewise on the part of the defendant, and there is evidence before you that was not before the other jury. You are not concerned as to what the other jury did. It is your duty in this case as twelve reasonable men who have been empanelled to try this issue, to honestly endeavor to reach a conclusion. When you go to the jury room you will undoubtedly approach this issue from twelve different viewpoints. You can not come to any conclusion by continuing to have twelve different viewpoints. You must discuss the issue here from every standpoint from which it can be approached and harmonize the facts in this case as disclosed by the evidence and by an analysis of the evidence, eliminate that which can have no bearing upon the issue, and apply that which is material, and in that way harmonize all of the testimony so that you may ultimately come to a conclusion where you all see this in the same light. No juror should surrender any conscientious conviction which he may have as to any fact established by the evidence in this case, but before he concludes with relation to that conviction and is convinced that he is right, he should approach the subject from the viewpoint of each of the other jurors who may differ with him, and see whether your conclusions cannot be harmonized. I do not know that these instructions are necessary, but in view of the fact that this case was recently tried and perhaps some information reached you as to the other trial, I thought possibly that I should instruct you upon that phase, so that you might not be influenced thereby. You will therefore entirely disregard what the other jury did and not consider it in any way.

By the COURT. Have I covered the whole subject, or are there any omissions or exceptions.

By COUNSEL FOR THE GOVERNMENT. No exceptions, Your Honor.

By COUNSEL FOR THE DEFENSE. We have no exceptions.

By the COURT to the jury. It will require your entire number to agree upon a verdict. Immediately upon retiring to the jury room you will elect one of your number foreman. Two forms of verdict will be submitted; one will be finding the defendant not guilty, and the other guilty. These forms of verdict speak for themselves, and when you have concluded, you will cause your verdict to be signed by your foreman and report to the court.

You may swear the bailiffs.

The jury thereupon retired and after due deliberation returned a verdict of guilty, and a fine of $150 was imposed.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5595. Adulteration and misbranding of coffee. U. S. * * * v. The Kellum Coffee & Manufacturing Co., a corporation. Plea of guilty. Fine $20 and costs. (F. & D. No. 6388. I. S. No. 12715-k.)

On April 14, 1916, the United States attorney for the Western District of Missouri, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Kellum Coffee and Manufacturing Co., a corporation, Kansas City, Mo., alleging shipment by said company, in violation of the Food and Drugs Act, on or about September 18, 1914, from the State of Missouri into the State of Kansas of a quantity of coffee which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it contained ground coffee with from 5 to 10 per cent of chicory.

Adulteration of the article was alleged in the information for the reason that a substance, to wit, chicory, had been mixed and packed therewith so as to lower and reduce and injuriously affect its quality and strength, and had been substituted in whole or in part for coffee, which the article purported to be.

Misbranding was alleged for the reason that the article was offered for sale and sold under the distinctive name of another article, to wit, coffee, whereas, in fact and in truth, it was not, but was a mixture consisting in part of chicory.

On April 30, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $20 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5596. Misbranding of "Blood Tabs." U. S. * * * v. The Reese Chemical Co., a corporation. Plea of nolo contendere. Fine $25 and costs. (F. & D. No. 6396. I. S. No. 11057-l.)

On April 27, 1917, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The Reese Chemical Co., a corporation, Cleveland, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about May 6, 1915, from the State of Ohio into the State of Louisiana, of a quantity of an article labeled in part, "Blood Tabs," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the preparation consisted of brownish sugar-coated pills containing chiefly calcium carbonate and small amount of gum benzoin forming a hard shell. The interior was a pasty mass containing sulphates and carbonates of iron and potassium, also iodid of potassium, glycerin, and reducing sugar.

It was alleged, in substance, in the information that the article was misbranded for the reason that certain statements, appearing on the labels of the bottles and cartons and included in the circular accompanying the article, falsely and fraudulently represented it as a remedy and cure for eczema, boils, pimples, ringworm, itch, sleeplessness, nervousness, loss of appetite, lack of ambition, rheumatism, and all diseases and conditions caused by impure weakened blood, and effective to eradicate and prevent diseases, and to restore ambition and energy, when, in truth and in fact, it was not, and said article was not effective as a remedy or cure for any of the diseases or disorders above set forth, nor would it eradicate or prevent disease or restore ambition or energy whether taken in conjunction with "Laxatabs," another preparation of defendant, or in any other manner.

On May 22, 1917, defendant company entered a plea of nolo cotendere to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5597. Adulteration of tomato ketchup. U. S. * * * v. 632 Cases of Tomato Ketchup. Consent decree of condemnation and forfeiture. Product released on bond to be destroyed and containers to be returned to claimant. (F. & D. No. 6450. I. S. Nos. 2815–k, 2816–k. S. No. E–248.)

On April 19, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 632 cases of tomato ketchup consigned by Alart & McGuire, Williamstown, N. J., remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped and transported from the State of New Jersey into the State of New York, and were received at New York City on or about April 8, 1915, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted in particular of a partially decomposed vegetable product, to wit, decayed tomato.

On May 18, 1915, Robert Burtt, Brooklyn, N. Y., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be released to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the product should be destroyed under the supervision of a representative of this department. It was further provided that the claimant should be entitled to the containers after the destruction of the product.

C. F. Marvin, *Acting Secretary of Agriculture.*

5598. Misbranding of "Palmer's Skin Whitener." U. S. * * * v. 20 Dozen * * * Packages of Palmer's Skin Whitener. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6468. I. S. No. 1873-k. S. No. E-244.)

On April 26, 1915, the United States attorney for the Southern District of Florida, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 dozen packages of "Palmer's Skin Whitener," remaining unsold in the original unbroken packages at Jacksonville, Fla., alleging that the article had been shipped on or about September 30, 1914, by Jacobs' Pharmacy Co., Atlanta, Ga., and transported from the State of Georgia into the State of Florida, and charging misbranding in violation of the Food and Drugs Act as amended.

It was alleged in substance in the libel, that the article was misbranded for the reason that certain statements appearing on the labels of the article falsely and fraudulently represented it as effective for clearing and brightening the complexion, for eczema, pimples, tetter, ringworm, eruptions of the skin, blackheads, sallow complexion, liver splotches, tan, sunburn, and freckles, as a skin bleach, and for clearing the complexion and whitening sallow or dark skin, and as a treatment for eczema, pimples, sallow complexion, tan, sunburn, and freckles, whereas, in truth and in fact, the article contained no substance, nor combination of substances, capable of producing the therapeutic effects claimed for it.

On September 13, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5599. Misbranding of "White Beaver's Cough Cream" and "White Beaver's Wonder Worker." U. S. * * * v. Spence-McCord Drug Co., a corporation. Plea of guilty. Fine, $300. (F. & D. No. 6508. I. S. Nos. 6922–e, 6923–e.)

On November 24, 1915, the United States attorney for the western district of Wisconsin, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Spence-McCord Drug Co., a corporation, La Crosse, Wis., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about January 10, 1913, from the State of Wisconsin into the State of Minnesota, of quantities of articles labeled in part, "White Beaver's Cough Cream" and "White Beaver's Wonder Worker," which were misbranded.

Analyses of samples of the articles of this shipment by the Bureau of Chemistry of this department showed that the "Cough Cream" contained morphine, chloroform, creosote, ammonium chlorid, and methyl salicylate.

It was alleged in substance in the information that the "Cough Cream" was misbranded for the reason that certain statements appearing on the label falsely and fraudulently represented it as a remedy for croup, pleurisy, and all other diseases of the lungs and air passages and effective as a lung healer in consumption, when, in truth and in fact, it was not. Misbranding was alleged in substance for the further reason that certain statements included in the circular or pamphlet accompanying the article falsely and fraudulently represented it as a preventive of all affections of the lungs, such as coughs, cold, and bronchial affections, and as a cure for the severest lung troubles and asthma and for bleeding of the lungs, when, in truth and in fact, it was not.

Analysis of a sample of the "Wonder Worker" by the said Bureau of Chemistry showed that it contained:

Alcohol (per cent by volume)	74.16
Chloroform (grams per 100 cc) (approximately)	1.70
Morphine (grams per 100 cc)	0.09

Also camphor, capsicum, oil of turpentine, and free ammonia.

It was alleged in substance in the information that the "Wonder Worker" was misbranded for the reason that certain statements included in the circular or pamphlet accompanying it falsely and fraudulently represented it as a cure for sprains, pleurisy, quinsy, cholera infantum, dysentery, fever and ague, and all the summer complaints of children, when, in truth and in fact, it was not.

On June 4, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $300.

C. F. Marvin, *Acting Secretary of Agriculture.*

5600. Adulteration and misbranding of vinegar. U. S. * * * v. 7 Half Barrels * * * of Vinegar. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6522. I. S. No. 15402-k. S. No. C-219.)

On May 12, 1915, the United States attorney for the eastern district of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 7 half barrels of vinegar, consigned on or about January 29, 1915, remaining unsold in the original unbroken packages at Jacksonville, Tex., alleging that the article had been shipped by Dawson Bros. Mfg. Co., Memphis, Tenn., and transported from the State of Tennessee into the State of Texas, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that a dilute solution of acetic acid had been mixed therewith so as to reduce, lower, and injuriously affect its quality and strength; and for the further reason that an artificially colored distilled vinegar or a dilute solution of acetic acid had been substituted wholly or in part for apple vinegar.

Misbranding of the article was alleged in substance for the reason that it was labeled, to wit, "Southern Beauty Brand Apple Vinegar, diluted to 4 per cent acid strength," when, in truth and in fact, it was not apple vinegar, but was an imitation of, and offered for sale under the distinctive trade name of, apple vinegar, and for the further reason that it was labeled and branded as aforesaid so as to deceive and mislead the purchaser in that it purported to be apple vinegar, when, in truth and in fact, it was simply an artificially colored distilled vinegar or a dilute solution of acetic acid.

On January 22, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

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United States Department of Agriculture,

BUREAU OF CHEMISTRY.

C. L. ALSBERG, CHIEF OF BUREAU.

SERVICE AND REGULATORY ANNOUNCEMENTS.

SUPPLEMENT.

N. J. 5601–5650.

[Approved by the Acting Secretary of Agriculture, Washington, D. C., April 12, 1918.]

NOTICES OF JUDGMENT UNDER THE FOOD AND DRUGS ACT.

[Given pursuant to section 4 of the Food and Drugs Act.]

5601. Misbranding of gluten feed. U. S. * * * v. Samuel Woolner, Alfred C. Woolner, and William B. Woolner (Continental Cereal Co.). Plea of guilty. Fine, $100 and costs. (F. & D. No. 6558. I. S. No. 27825–e.)

On April 25, 1916, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United Sates for said district an information against Samuel Woolner, Alfred C. Woolner, and William B. Woolner, trading as Continental Cereal Co., Peoria, Ill., alleging shipment by said defendants, in violation of the Food and Drugs Act, on or about October 31, 1912, from the State of Illinois into the State of Indiana, of a quantity of an article labeled in part, "Continental Gluten Feed * * * manufactured by Continental Cereal Company, Peoria, Illinois," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Protein (per cent)	25.16
Ether extract (crude fat) (per cent)	9.22

Misbranding of the article was alleged in the information for the reason that the statements borne on the bags, to wit, "Protein 29% Minimum" and "Fat 12.5 % Minimum," were false and misleading in that they represented that said article contained not less than 29 per cent of protein and not less than 12.5 per cent of fat, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 29 per cent of protein and not less than 12.5 per cent of fat, whereas, in truth and in fact, it did not, but contained a less amount, to wit, 25.16 per cent of protein and 9.22 per cent of fat.

On October 18, 1916, the defendants entered pleas of guilty to the information, and the court imposed a fine of $100 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5602. Adulteration of pork and beans. U. S. * * * v. 200 Cases of Pork and Beans. Consent decree of condemnation and forfeiture. Good portion ordered released on bond. Unfit portion ordered destroyed. (F. & D. No. 6564. I. S. No. 3560-k. S. No. E-285.)

On May 26, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases of pork and beans remaining unsold in the original unbroken packages at Newburgh, N. Y., alleging that the article had been shipped on or about September 29, 1914, by the Thomas Canning Co., Grand Rapids, Mich., and transported from the State of Michigan into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part "Rapids brand pork and beans * * *. Packed by Thomas Canning Co., Grand Rapids, Mich."

Adulteration of the article was alleged in the libel for the reason that it consisted in particular, of a partially decomposed vegetable product, to wit, moldy beans.

On May 28, 1917, William F. Cassedy and John S. Bull, executors of Stephen M. Bull, deceased, claimants, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimants upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditional in part that the product should be reshipped to the said Thomas Canning Co., Grand Rapids, Mich., and should be sorted under the supervision of a representative of this department, the portion found unfit for food to be destroyed or denatured, and the good portion to be released to said claimants for food purposes.

C. F. Marvin, *Acting Secretary of Agriculture.*

5603. Adulteration and misbranding of birch oil. U. S. * * * v. 3 Packages * * * of * * * Birch Oil. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 6618. I. S. No. 3813-k. S. No. E-321.)

On June 15, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of three packages, containing approximately 150 pounds of birch oil, remaining unsold in the original unbroken packages at New York, N. Y., alleging that the article had been shipped on or about May 31, 1915, by J. B. Johnson, Hickory, N. C., and transported from the State of North Carolina into the State of New York, and charging adulteration and misbranding in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it was offered for sale as birch oil, when, in fact, it consisted largely of methyl salicylate and a low boiling point petroleum oil, which had been mixed and packed with and substituted for oil of birch.

Misbranding of the article was alleged for the reason that it was offered for sale and invoiced as birch oil, whereas, in truth and in fact, it consisted largely of methyl salicylate and a low boiling point petroleum oil, which had been substituted for the pure oil.

On July 16, 1915, the said James B. Johnson, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to the said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part that the product should be correctly labeled.

C. F. Marvin, *Acting Secretary of Agriculture.*

5604. Adulteration of pepper. U. S. * * * v. 20 Cases and 10 Cartons of pepper. Default decree of condemnation, forfeiture, and sale. (F. & D. No. 6634. I. S. Nos. 13497-k, 13498-k. S. No. C-245.)

On June 18, 1915, the United States attorney for the Southern District of Mississippi, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 20 cases and 10 cartons of pepper, remaining unsold in the original unbroken packages at Laurel, Miss., alleging that the article had been shipped by the Newton Tea & Spice Co., Cincinnati, Ohio, and transported from the State of Ohio into the State of Mississippi, the shipment having been received on or about May 6, 1915, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the article was adulterated for the reason that it contained pepper shells.

On March 14, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be sold at public auction by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5605. Misbranding of "Watkins Vegetable Anodyne Liniment," "Watkins Female Remedy," and "Watkins Kidney Tablets." U. S. * * * v. The J. R. Watkins Medical Co., a corporation. Plea of guilty. Fine, $30. (F. & D. No. 6778. I. S. Nos. 4211–h, 1489–h, 1491–h.)

On May 16, 1916, the United States attorney for the District of Minnesota, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against The J. R. Watkins Medical Co., a corporation, Winona, Minn., alleging shipment, in violation of the Food and Drugs Act, as amended, by said company, on or about January 29, 1914, from the State of Minnesota into the State of Wisconsin, of a quantity of an article labeled in part, "Watkins Vegetable Anodyne Liniment," and on or about May 19, 1914, from the State of Minnesota into the State of Maryland, of quantities of articles labeled in part, "Watkins Female Remedy" and "Watkins Kidney Tablets," which were misbranded.

Analysis of a sample of the Anodyne Liniment by the Bureau of Chemistry of this department showed that it was essentially a hydroalcoholic solution of oleo resin capsicum, camphor, safrol (or oil sassafras), and opium.

It was alleged in substance in the information that the "Anodyne Liniment" was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as effective for the relief of diphtheria when used as directed, when, in truth and in fact, it was not so effective when used in any manner. Misbranding was alleged in substance for the further reason that certain statements included in the wrapper of the article falsely and fraudulently represented it as a remedy for ague and chills, chicken cholera, cholera, heaves in horses, and sore eyes, and as effective for the relief of hog cholera, la grippe, and rheumatism, when, in truth and in fact, it was not.

Analysis of a sample of the Female Remedy by the said Bureau of Chemistry showed that it contained Alcohol (per cent by volume), 19.2, and unidentified extractive matter bearing emodin.

It was alleged in substance in the information that the Female Remedy was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for all female complaints and diseases of women, and as effective in the treatment of suppressed menstruation, falling of the womb, and deranged monthly periods, when, in truth and in fact, it was not. Misbranding was alleged in substance for the further reason that certain statements included in the wrapper of the article falsely and fraudulently represented it as effective in the treatment of congestion of the ovaries and womb, when, in truth and in fact, it was not.

Analysis of a sample of the Kidney Tablets by the said Bureau of Chemistry showed that they appeared to contain buchu, oil of juniper, pichi; carbonate and nitrate; magnesium, calcium, silica, and potassium.

It was alleged in substance that the Kidney Tablets were misbranded for the reason that certain statements appearing on the label thereof falsely and fraudulently represented them as a remedy for diseases of the kidneys, catarrh and inflammation of the bladder, and incontinence and retention of the urine, when, in truth and in fact they were not. Misbranding was alleged in substance for the further reason that certain statements included in the wrapper of the tablets falsely and fraudulently represented them as a remedy for gravel and diabetes, when, in truth and in fact, they were not.

On December 15, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $30.

C. F. Marvin, *Acting Secretary of Agriculture.*

5606. Misbranding of "Reducine." U. S. * * * v. The Reducine Co., a corporation. Plea of guilty. Fine, $1. (F. & D. No. 6784. I. S. No. 8923-h.)

On December 29, 1915, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Reducine Co., a corporation, Otsego, Mich., doing business at New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on March 27, 1914, from the State of New York into the State of Maryland, of a quantity of an article labeled in part, "Reducine," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Reaction to litmus	Slightly alkaline.
Steam distillate showed only pine tar oil.	
Total solids (110° C.) (per cent)	72
Ash (per cent)	6
Potassium iodid (per cent)	0.96

Sample appears to consist essentially of pine tar carrying 1 per cent potassium iodid and a little alkali.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a cure for the worst cases of sprung tendon, bog spavin, splint, big knee, and wind galls, and as effective in reducing all enlargements, when, in truth and in fact, it was not, and for the further reason that certain statements included in the booklet accompanying the article falsely and fraudulently represented it as a cure for any case of cracked heels with one application, all cases of cracked heels, the most obstinate cases of collar gall, sore neck, or sore back with one application, all cases of collar gall, sore neck, or sore back, eczema on a dog with one application, effective in removing every enlargement from any animal, whether such enlargement be on its legs, throat, or body, as a cure for the worst case of sprung tendon, bog spavin, splint, big knee, wind galls, and any other joint or bursal enlargement, as a relief in deep-seated lameness in shoulder, hip, back, and stifle, as a cure for every case of foot lameness where the coffin joint is movable, for old indolent sores of every description, for poll evil and fistula, as a preventive of lockjaw, as a relief for swelling and inflammation due to recent injury, effective to remove soreness due to recent injury, as a remedy for navicular lameness and coronary lameness, as a cure for splint, as a remedy for distemper, sore throat, shipping fever, yard fever, and every sort of throat trouble, and effective in removing every enlargement from a horse's throat and neck and as a cure for mange on any animal, when, in truth and in fact, it was not.

On July 27, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $1.

C. F. Marvin, *Acting Secretary of Agriculture.*

5607. Misbranding of "Stone Root and Gin." U. S. * * * v. 100 Cases * * *, 5 Cases * * *, and 10 Cases * * * of Stone Root and Gin. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 6802. I. S. No. 16256–k. S. No. C–282.)

On August 9, 1915, the United States attorney for the Northern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases, each containing 1 dozen quart bottles, 5 cases, each containing 2 dozen pint bottles, and 10 cases, each containing 4 dozen half-pint bottles, of "Stone Root and Gin," alleging that the article had been shipped on or about April 28, 1915, by W. L. Weller & Sons, Louisville, Ky., and transported from the State of Kentucky into the State of Ohio, and charging misbranding in violation of the Food and Drugs Act, as amended.

It was alleged in substance in the libel that the article was misbranded for the reason that the statements appearing on its labels, to wit, "* * * An excellent preparation for Kidney, Bladder, and all Urinary Troubles, also an efficient relief for Nervous Debility and Dyspepsia. As a tonic it has no equal. * * *," were false and misleading and fraudulent, and that no ingredient or ingredients in the product were capable of producing the therapeutic effects claimed for it in the labeling and branding.

On August 30, 1915, the said W. L. Weller & Sons, claimants, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $500, in conformity with section 10 of the act, conditioned in part "that all labels and marks whatsoever as to the present identity and contents of said article shall be removed" from each bottle and that in the event that said claimants "undertake the recompounding of the article," the same should be done under the supervision of a representative of this department.

C. F. Marvin, *Acting Secretary of Agriculture.*

5608. Adulteration and misbranding of apples. U. S. * * * v. Walter B. Wedell. Tried to the court and a jury. Verdict of guilty. Fine, $200. (F. & D. No. 6829. I. S. No. 2543-h.)

On March 13, 1916, the United States attorney for the District of Utah, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Walter B. Wedell, Hot Springs, Utah, alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about October 25, 1913, from the State of Utah into the State of Colorado, of a quantity of an article labeled in part, "Gano Extra," which was adulterated and misbranded.

Examination of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Box contained 135 apples, classified as follows:

50 wormy or worm eaten, equivalent to	37 per cent.
6 blemished by insect "stings," equivalent to	4 per cent.
3 blemished by scab, equivalent to	2 per cent.
1 blemished by sun scald, equivalent to	1 per cent.
75 apparently sound and free from defects, equivalent to	56 per cent.

The fruit was defective and filthy on account of ravages of insects, and was not of "extra" grade, as labeled, because of the defects and blemishes.

Adulteration of the articles was alleged in the information for the reason that it consisted in whole or in part of a filthy vegetable substance.

Misbranding of the article was alleged for the reason that the statement appearing on the label regarding the article and the ingredients and substances contained therein, to wit, "Gano Extra," was false and misleading in that it indicated to purchasers thereof that it consisted of apples of gano type or variety, which were of extra or superior quality, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it consisted of apples of gano type or variety, which were of extra or superior quality, when, in truth and in fact, it did not, but consisted of, to wit, gano apples which were in whole or in part wormy, worm eaten, and otherwise filthy.

On November 22, 1906, the case having come on for trial before the court and a jury, after the submission of evidence and argument by counsel, the following charge was delivered to the jury by the court. (Johnson, D. J.)

Gentlemen of the jury, the defendant, Walter B. Wedell, is charged in this case by the United States on an information filed by the district attorney with the violation of what is commonly called the Food and Drugs Act of Congress. The charge is in two counts, the first of which is, beginning with the charging part, that "Walter B. Wedell, of the city of Hot Springs, State of Utah, did within the Judicial District of Utah, and within the jurisdiction of this court, on or about the 25th day of October, in the year 1913, then and there, in violation of the Act of Congress of June 30, 1906, known as the Food and Drugs Act, unlawfully ship and deliver for shipment from the city of Hot Springs, State of Utah, to the city of Denver, State of Colorado, consigned to W. B. Wedell, for delivery to the Western Fruit and Vegetable Company, a certain consignment, to-wit, 630 boxes containing an article designed and intended to be used as an article of food, to-wit, apples, which were then and there denominated as to the contents thereof and labeled, marked and branded as follows, to-wit: "Gano Extra."

That said article of food, when shipped and delivered for shipment as aforesaid, was then and there adulterated within the meaning of said act of Congress in that it consisted in whole or in part of a filthy vegetable substance; all of

which was and is contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

The second count charges that said article of food when shipped and delivered for shipment as aforesaid, was then and there misbranded in that the following statement regarding the article and the ingredients and substances contained therein appearing on the label aforesaid, to-wit, "Gano Extra," was false and misleading in that it indicated to purchasers thereof that the said article consisted of apples of gano type or variety, which were of extra or superior quality, when, in truth and in fact, the said article did not consist of gano apples of extra or superior quality, but did consist of, to-wit, gano apples which were in whole or in part wormy, worm eaten, and otherwise filthy; and the said article was then and there further misbranded in that it was labeled "Gano Extra," so as to deceive and mislead the purchasers into the belief that the said article consisted of apples of gano type or variety, which were of extra or superior quality, when, in truth and in fact, the said article did not consist of gano apples of extra or superior quality, but did consist of, to-wit, gano apples which were in whole or in part wormy, worm eaten, and otherwise filthy; all of which was and is contrary to the form of statute in such case made and provided and against the peace and dignity of the United States of America.

The statute governing in this case, gentlemen of the jury, insofar as it is material to the issues, reads as follows:

"That the introduction into any State from any other State of any article of food which is adulterated or misbranded, within the meaning of this act, is hereby prohibited, and any person who shall ship or deliver for shipment from any State to any other State any such article so adulterated or misbranded, within the meaning of this act, shall be guilty of a misdemeanor.

"The term 'food' as used herein shall include all articles used for food, drink, confectionery or condiment by man or other animal, whether simple, mixed or compound. That for the purposes of this act an article shall be deemed to be adulterated if it consists in whole or in part of a filthy decomposed vegetable substance."

Under the second count the language of the statute reads as follows:

"That the term 'misbranded' as used herein shall apply to all articles of food or articles which enter into the composition of food, the package or label of which shall bear any statement, design, or device regarding such article which shall be false or misleading in any particular. That for the purposes of this act an article shall also be deemed to be misbranded in the case of food if it be labeled or branded so as to deceive or mislead the purchaser."

Under this statute I charge you, gentlemen of the jury, that a shipment made from Hot Springs in this State to Denver in the State of Colorado, by railroad, would be a shipment in interstate commerce.

You will observe that under this statute and under the two counts in the information the defendant is charged in the first count with a shipment of an article adulterated as defined in the statute. Under this count the matter of labeling is immaterial. The only question that you have for consideration in determining your verdict upon this count is, were the apples, or any part of them, alleged to have been shipped by the defendant, adulterated as defined under the statute, which means, as defined under the statute, did the said apples, or any part of them, consist in whole or in part of a filthy vegetable substance.

There has been evidence offered in the case for the purpose of tending to prove or show that some of the apples contained in these boxes shipped by the defendant were what has been termed "wormy" apples. And it is claimed by the prosecution that wormy apples fall within the definition "as consisting in whole or in part of a filthy vegetable substance." Whether or not these apples shipped by the defendant were wormy, or whether, being wormy, they contained matter filthy and a vegetable substance, is a question of fact, gentlemen of the jury, for you to determine from all of the evidence offered in the case.

The word "filthy" has its ordinary and usual signification. I shall not attempt at this time to define the word by the use of other language. It is a term that is familiar to you and of common use and is used in its ordinary and usual acceptation.

If, upon a consideration of the meaning of the word, you shall find that these apples were wormy and that they were or contained a filthy vegetable substance as a result of being wormy, then, under the definition as given by the

statute, they were adulterated and their shipment was and is prohibited by the terms of the statute in interstate commerce trade.

If you shall find that these apples, or some part of them, consisted in whole or in part of a filthy vegetable substance, then I instruct you, gentlemen of the jury, that the defendant would be guilty upon the first count. If, however, you shall find that they were not or did not consist in whole or in part of a filthy vegetable substance, then I instruct you that your verdict should be, upon that count, not guilty.

The defendant is charged in the second count, as I have already stated to you, with misbranding the boxes of fruit or apples shipped by him, in that they were so labeled or branded as to deceive or mislead the purchaser.

By the words used in the statute "the purchaser" is meant not only the wholesale dealer who might buy the apples or the retail dealer who might purchase them but includes also the ultimate consumer who might purchase them for use.

It is charged in the information that they were misbranded in that they were labeled "Extra Gano" or "Gano Extra," and that they were misbranded in that they were not in fact Gano Extra but an inferior apple. The name or expression "Gano Extra" it is claimed by the prosecution has a distinctive meaning, that it characterizes apples of a certain variety or quality, and it is claimed that these apples shipped by the defendant in this shipment were not of the quality which the name "Extra Gano" designates.

Evidence has been introduced in this case tending to show or to prove this designation, and it is for you to determine, gentlemen of the jury, from all of the evidence in the case what is the distinctive meaning of the language or words "Extra Gano" or "Gano Extra."

It is also claimed by the prosecution that these apples were not of the quality which this name designates, but were of an inferior quality, in that they were wormy or worm-eaten. Now I charge you, gentlemen of the jury, that if the name "Gano Extra" or "Extra Gano" designates an apple which is not wormy, and if you shall find from the evidence that the apples shipped by the defendant in this case were, in whole or in part, wormy apples, then the apples would not, in fact, correspond to the designation, and those words being considered alone, if a purchaser seeing a box of the apples with this label was deceived or misled with respect to their quality, then the defendant would be guilty of misbranding, and if that were all in this case, would be guilty as charged in the second count of the information. But, gentlemen of the jury, it appears in this case that this box of apples shipped by the defendant had upon them brands or labels placed there by certain officers of the State; the language of the statement contained upon these brands or labels reads, as I now remember it: "This fruit has been condemned by the State of Utah and is shipped to be used in the manufacture of by-products."

Now it is claimed by the defendant in this case that notwithstanding the use of the words "Extra Gano," assuming that some of these apples were wormy and were not of the quality which that name designated, that nevertheless by reason of these brands or stamps placed upon the boxes by the State officers, a purchaser would be so informed as not to be deceived or misled with respect to them. Whether that contention is or is not true, gentlemen of the jury, I shall submit to you as a question of fact to be determined in this case by you. For the determination of that particular question you may take into consideration the language used upon this State label or brand, its size, its location on the box, and from all of these facts as they may appear in the evidence before you determine whether or not a purchaser of a box of these goods with this label placed there by the defendant "Extra Gano" and these other labels or brands placed upon the boxes by the officers of the State, would be misled or deceived with respect to what he was buying. If such a purchaser would not be deceived or misled and would reasonably know that notwithstanding the stamp "Extra Gano" that he was not getting "Extra Gano," then I charge you, gentlemen of the jury, that there would be no misbranding in this case and the defendant would not be liable; but if, on the other hand, after a consideration of all the matters to which I have called your attention you shall believe that a purchaser, and by "purchaser" I mean, as I said before, any one who might buy, a person of ordinary and reasonable intelligence, if such a person would be misled and deceived and fairly and reasonably suppose that he was buying "Extra Gano" apples, then the defendant would be guilty as charged in the information.

The question of the intent of the defendant in this action or his motive with respect to this shipment or the labels or stamps placed upon the boxes is immaterial. Under the first count the queston is, were these apples adulterated within the meaning of the statute? Under the second count, were they misbranded within the meaning and language of the statute?

In all the matters concerning which I have instructed you that you must find in this case in order to convict the defendant, I now instruct you that it is necessary that you find each and all of such facts beyond a reasonable doubt.

A reasonable doubt is a doubt based upon reason and which is reasonable in view of all the evidence. It is a fair doubt growing out of the evidence or lack of evidence in the case. It is not a mere imaginary, captious or possible doubt but a fair doubt based upon reason and common sense, and if after an impartial comparison and consideration of all the evidence in the case you can not candidly say that you are satisfied of the defendant's guilt, you have a reasonable doubt, and if such is the condition of your mind after considering all the testimony you should find the defendant not guilty. But if after such impartial comparison and consideration of all the evidence you can truthfully say that you have an abiding conviction to a moral certainty of the defendant's guilt, you have no reasonable doubt. A doubt to justify an acquittal must be such a doubt as would cause a reasonable, prudent, and considerate man to hesitate and pause before acting in the graver and more important affairs of life.

The defendant in this case is presumed to be innocent until he is proven guilty, and this presumption, gentlemen of the jury, accompanies each defendant in a criminal case throughout its entire course and until that presumption is overcome and overthrown by evidence offered in the case.

You are the exclusive judges of the facts proven, of the credibility of the witnesses, of the weight and effect of the evidence and of the inferences to be drawn therefrom, and in determining these matters you are to exercise your best judgment based upon your experience in life as men and your knowledge of the motives which influence persons in their statements.

You have a right to take into consideration the conduct and manner of the witnesses while testifying before you, their intelligence and means of observation, their opportunities to know and capacity to remember and to state the facts to which they testify, their interest or lack of interest, if any has been shown, in the result of the trial, their prejudice or bias, if any has been shown, the state of mind of any witness at the time of the occurrence of the things to which he has testified in so far as the evidence enables you to judge it, and the probability or improbability of the truth of these statements in view of all the other evidence.

You are not bound to believe the testimony of any witness or any number of witnesses. You are to search for the truth, believing only such testimony as carries conviction of its truth to your minds.

If you shall believe that any witness has willfully testified falsely as to any material fact in the case, you are at liberty, but not required, to disregard the whole of the testimony of such witness, except in so far as he may have been corroborated by credible witnesses or credible evidence in the case.

If there is a conflict in the testimony of witnesses then it is your duty to reconcile such conflicts in so far as you can, but it is still for you to determine for yourselves what the ultimate truth of the case is.

It is your duty to consider the evidence all together fairly, impartially and conscientiously. You should arrive at your verdict solely upon the evidence introduced before you upon the trial. You should not consider or be influenced by any evidence offered but not admitted by the court, nor any evidence stricken out by the court or withdrawn by counsel.

When you retire to your jury room you will elect one of your number to act as foreman and when you have agreed upon your verdict your foreman will sign it as such in behalf of all of you.

Forms of verdict will be furnished you, gentlemen of the jury, providing for the acquittal or conviction of the defendant upon each of the counts or both of the counts, as your deliberations may result.

At the request of the district attorney I will say to you, gentlemen of the jury, that it is not necessary for the Government to prove any concrete case of a purchaser being deceived or misled. As I stated to you in my instructions heretofore, a purchaser might be any person, as I explained to you, who might buy these apples.

What is a filthy apple, gentlemen of the jury, is a matter for you to determine from all the evidence in the case of course, from your own common experience; you have the right to take that into consideration as well as what you hear. If you hear something that you know is not true of your own experience you have a right to consider it.

Mr. Cook. I think this suggestion should be made in that connection; the language of the count is "consisting in part of filthy vegetable substance."

The Court. Oh, yes; the whole apple does not have to be filthy. The language of the statute is, the language of the charge is and my instruction is I think throughout the instructions "in whole or in part."

Mr. Cook. So the whole apple even though wormy does not need to be filthy, if it consists in part of filthy vegetable substances.

The Court. It would have to contain filthy vegetable substances.

Mr. Henderson. The question for this jury to decide is whether a wormy apple is a filthy apple.

The Court. That is the question for them to decide certainly.

Mr. Henderson. It is for this jury to decide that question.

The Court. That question is submitted to them.

The jury thereupon retired and after due deliberation returned a verdict of guilty. Thereupon the defendant, by his counsel, filed his motions in arrest of judgment and for a new trial and on January 20, 1917, said motions were denied, as will more fully appear from the following decision by the court (Johnson, D. J.):

In this case the defendant was convicted on two counts; the first count involved the question which counsel has discussed as to a filthy substance; the second count involved misbranding.

That these apples were misbranded, as charged in the second count of the indictment, I have not any doubt. The boxes were labeled "Extra Gano," and the proof showed that "Extra Gano" was a term that signified the apples were extra good, and at least were not wormy. As I understood it at the time, the only reason that counsel for the defendant contended that they were not misbranded was that certain other brands or notices were stamped on the boxes. I think the court properly left to the jury whether or not these other brands modified the main brand. The fact is I have some doubt in my own mind whether I should have left that question to the jury at all. Just why these apples were put into boxes that had the name "Extra Gano" on them, or why this brand was put on after they were put in, it is not necessary to discuss. The apples could have been shipped without any brand on the boxes at all, except such as the State put on. But those words were there, and I think the defendant got all under the instructions that he was entitled to, and possibly more.

Now, whether or not the statute is intended to cover wormy apples is a question, of course, that is open to discussion. It is like the construction and scope to be given any other statute—the Mann Act, the Safety Appliance Act, and a great many others. I do know this, that the Supreme Court of the United States has shown by its interpretation of these various acts a very liberal interpretation as to their scope and purpose, and in view of the interpretation of the court of final resort upon statutes of this character I think that this court would be abusing its power to undertake in this jurisdiction to put a narrow construction upon a very useful statute.

However, I should be very glad, indeed, to have counsel review this case in the court of appeals. It is important, of course, to determine whether or not wormy apples can be shipped in interstate commerce. It is important to every grower of fruit and every shipper of it. In this case I am inclined, so far as this court is concerned, to accept the verdict of the jury as final.

Upon each count the motion in arrest of judgment and the motion for a new trial may be denied, and the judgment of the court is that the defendant pay a fine of $100 upon each of the counts upon which he stands convicted.

On the same date an order was entered sentencing the defendant to pay a fine of $200, in conformity with the foregoing decision.

C. F. Marvin, *Acting Secretary of Agriculture.*

5609. Adulteration of ketchup. U. S. * * * v. 725 Cases of Tomato Ketchup. Consent decree of condemnation and forfeiture. Good portion released on bond. Unfit portion destroyed. (F. & D. No. 6850. I. S. No. 11109–l. S. No. C–319.)

On September 6, 1916, the United States attorney for the Northern District of Texas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 725 cases of tomato ketchup, remaining unsold in the original unbroken packages at Dallas, Tex., alleging that the article had been shipped on or about October 20, 1914, by the Harbauer Co., Toledo, Ohio, and transported from the State of Ohio into the State of Texas, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in substance in the libel for the reason that it consisted of a partially decomposed vegetable product.

On March 6, 1917, the said Harbauer Co., claimant, having admitted the allegations of the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,000, in conformity with section 10 of the act, conditioned in part that the product should be inspected and sorted under the supervision of a representative of this department, the unfit portion to be destroyed or denatured, and the balance to be released to said claimant for food purposes.

C. F. Marvin, *Acting Secretary of Agriculture.*

5610. Misbranding of "Nature's Creation Co.'s Discovery." U. S. * * * v. The Nature's Creation Co., a corporation. Plea of nolo contendere. Fine, $100 and costs. (F. & D. No. 6856. I. S. No. 11234-e.)

On February 21, 1916, the United States attorney for the Southern District of Ohio, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Nature's Creation Co., a corporation, Columbus, Ohio, alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about May 29, 1913, from the State of Ohio into the State of Kansas, of a quantity of an article labeled in part, "The Nature's Creation Co.'s Discovery," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the product was a hydroalcoholic solution containing 6 per cent by volume of alcohol, with inorganic material apparently combined as magnesium sulphate and potassium iodid, with some emodin-bearing vegetable matter.

Accompanying the solution was a tablet containing iron, sulphates, aloes, and licorice, and coated with calcium carbonate.

It was alleged in substance in the information that the article was misbranded for the reason that the statement appearing on its label, to wit, "A remedy for tuberculosis," falsely and fraudulently represented it as a remedy for tuberculosis, when, in truth and in fact, it was not. Misbranding was alleged further in substance for the reason that certain statements included in the circular or pamphlet accompanying the article falsely and fradulently represented it as effective for the cure of consumption or tuberculosis of any part of the body, when, in truth and in fact, it was not.

On June 29, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5611. Adulteration of red kidney beans. U. S. * * * v. 299 Cases * * * of Red Kidney Beans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6868. I. S. Nos. 10703–l, 10704–l, 10709–l, 10710–l. S. No. C–308.)

On September 22, 1915, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 299 cases of red kidney beans, remaining unsold in the original unbroken packages at Louisville, Ky., alleging that the article had been shipped on or about July 2 and 3, 1915, by the Ladoga Canning Co., Ladoga, Ind., and transported from the State of Illinois into the State of Kentucky, and charging adulteration in violation of the Food and Drugs Act. The retail cans were labeled in part, "Dutch Girl Brand Red Kidney Beans. * * * Clay City Packing Co., Distributors, Clay City, Ind."

Adulteration of the article was alleged in the libel for the reason that it contained, and in part consisted of, a decomposed vegetable substance.

On November 1, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5612. Adulteration of apples. U. S. * * * v. Southern Can Co., a corporation. Plea of nolo contendere. Fine, $5 and costs. (F. & D. No. 6898. I. S. No. 8994-m.)

On May 31, 1917, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Southern Can Co., a corporation, Baltimore, Md., alleging that said company received from the State of Pennsylvania a quantity of canned apples, in cases, which were adulterated in violation of the Food and Drugs Act, and having so received said article did, on or about July 17, 1916, offer to deliver the same, in the original unbroken packages, to a purchaser in the city of Baltimore, Md., in further violation of said act. The article was labeled in part, "Musselman's Choice Canned Apples. Packed by Musselman Canning Co., Biglerville, Pa."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

> Each of the three cans examined was leaky. The contents of two of the cans were badly decomposed. The contents of the third can were not fit for food.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On May 31, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $5 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5613. Adulteration of tomato pulp. U. S. * * * v. 100 Cases * * * Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 6917. I. S. No. 3503–l. S. No. E–416.)

On October 13, 1915, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases, each containing four dozen cans of tomato pulp, remaining unsold in the original unbroken packages at Brooklyn, N. Y., alleging that the article had been shipped on or about September 21, 1915, by G. T. Redden & Co., Denton, Md., and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part, "Redden's Tomato Pulp, Packed by G. T. Redden & Co., Denton, Md."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy and decomposed vegetable substance.

On October 22, 1915, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

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5614. Misbranding of "Radium Healing Balm." U. S. * * * v. J. H. Frank Smokey. (Uranium Mining Co.) Plea of guilty. Fine, $10 and costs. (F. & D. No. 6948. I. S. No. 17548-k.)

On August 25, 1917, the United States attorney for the District of Colorado, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against J. H. Frank Smokey, trading as Uranium Mining Co., Denver, Colo., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about June 21, 1915, from the State of Colorado into the State of California, of a quantity of an article labeled in part, "The Great Radium Healing Balm," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

A soap with odor of sassafras and containing—

Sodium carbonate (per cent)	9.3
Sodium bicarbonate (per cent)	4.6
Sand (per cent)	1.1
Water (per cent)	56.4

The radioactive power of the "Balm" is due to radium substances and equals 0.5×10^{-9} curies per gram, or a total of 0.033 microcuries for the jarful of 65.95 grams.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for cancers, carbuncles, rheumatism, pains, swellings, pneumonia, bronchitis, and pleurisy, when in truth and in fact it was not.

On August 25, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $10 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5615. Adulteration and misbranding of a compounded physician's prescription and "Spirits Camphor." U. S. * * * v. Roger W. Duffey. Plea of guilty. Fine, $30. (F. & D. No. 6951. I. S. Nos. 2060–h, 2062–h, 22107–h.)

On July 11, 1916, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Roger W. Duffey, Washington, D. C., alleging the sale by said defendant, at the District aforesaid, on August 19, 1913, in violation of the Food and Drugs Act, of an article of drugs compounded from a physician's prescription, and on said date, and on April 15, 1914, of quantities of an article labeled in part, "Spirits Camphor," which were adulterated and misbranded.

Analyses of samples of the article in each sale by the Bureau of Chemistry of this department showed the following results:

The article compounded from the physician's prescription:
Each powder contains on the average 3¾ grains of antipyrin.
The two samples of "Spirits Camphor" contained respectively 8.94 grams and 8.0 grams of camphor per 100 cc.

Adulteration of the article compounded from the physician's prescription was alleged in the information for the reason that its strength and purity fell below the professed standard and quality under which it was sold, in that the prescription called for 36 grains of acetphenetidin in 12 powders, whereas, in truth and in fact, it did not contain any acetphenetidin.

Misbranding was alleged for the reason that the article purported to contain, in 12 powders, 36 grains of acetphenetidin, as directed by the prescription, whereas, in truth and in fact, the powders did not contain any acetphenetidin, but contained, approximately, 42 grains of another article, to wit, antipyrin, which had been substituted for and sold under the name of acetphenetidin.

Adulteration of the Spirits Camphor sold August 19, 1913, was alleged in the information for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, and differed from the standard of quality and purity as determined by the test laid down in the said Pharmacopœia, official at the time of investigation of the article, in that said article contained 8.94 grams camphor per 100 cubic centimeters, and contained 65.6 per cent alcohol, whereas said Pharmacopœia provides that it should contain not less than 10 grams camphor per 100 cubic centimeters, and alcohol, approximately, 90 per cent; and the standard of strength, quality, and purity of said article was not declared on the container thereof.

Misbranding of the article was alleged for the reason that it contained alcohol, and the label failed to bear a statement of the quantity or proportion of alcohol contained therein.

Adulteration of the "Spt. Camphor," sold April 15, 1914, was alleged for the reason that it was sold under and by a name recognized in the United States Pharmacopœia, and differed from the standard of quality and purity as determined by the test laid down in the said Pharmacopœia, official at the time of the investigation of the article, in that it contained 8 grams camphor per 100 cubic centimeters, whereas said Pharmacopœia provides that it should contain not less than 10 grams of camphor per 100 cubic centimeters; and the standard of strength, quality, and purity of the article was not declared on the container thereof.

Misbranding of the article was alleged for the reason that it contained alcohol, and the label failed to bear a statement of the quantity or proportion of alcohol contained therein.

On July 11, 1916, the defendant entered a plea of guilty to counts 1, 3, and 5 of the information, charging adulteration of each article, and the court imposed a fine of $30. Counts 2, 4, and 6 of the information, charging misbranding of each article, were nol-prossed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5616. Alleged misbranding of "Tuberclecide." U. S. * * * v. The Tuberclecide Co., a corporation. Tried to the court. Case dismissed. (F. & D. No. 6973. I. S. Nos. 23601–h, 23602–h.)

On May 15, 1916, the United States attorney for the Southern District of California, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Tuberclecide Co., a corporation, Los Angeles, Cal., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about August 25, 1914, from the State of California into the State of Arizona, of quantities of an article labeled in part, "Tuberclecide," which was misbranded.

Analysis of a sample of the "Tuberclecide" by the Bureau of Chemistry of this department showed that it consisted essentially of creosote carbonate with traces of creosote and water; specific gravity, 20° C., 1.164.

Analysis of the plaster, which accompanied the article, showed the following composition:

Odor indicates tar oil and camphor.

Atropine	Present.
Rosin	Present.
Petrolatum	Present.
Vesicating agents	Absent.
Lead Soap	Absent.

Consists essentially of rosin, petrolatum, atropine, with indications of tar oil and camphor.

Analysis of the "Metablitone," which accompanied the article, showed:

Alcohol (per cent by volume)	45.9
Methyl alcohol	Absent.
Strychnine	Present.
Quinine	Present.
Other alkaloids	Not detected.
Solids (grams per 100 cc)	14.55
Ash (gram per 100 cc)	0.42
Aesculin	Indicated.
Extractives	Large amounts.

Summary: A hydroalcoholic solution of extractives carrying quinine, strychnine, and indications of aesculin.

It was alleged in substance in the information that the article described as "Tuberclecide" was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it to be effective as a remedy for tuberculosis (or consumption), and effective when used in connection with "Metablitone" as a reliable treatment for tuberculosis, and effective when used in connection with the plasters accompanying said articles, as a remedy for tuberculosis, and effective when taken in doses of 14 drops in the capsules accompanying said articles as a remedy for tuberculosis, when, in truth and in fact, it was not so effective when used as described or when used in connection with any plasters or when taken in any quantity in any capsules or in any other manner. It was alleged in substance that the article was misbranded for the further reason that certain statements included in the circular accompanying the article falsely and fraudulently represented it to be effective as a remedy, reliable treatment, and cure for tuberculosis, and also to be effective as a remedy, reliable treatment, and cure for tuberculosis when used in connection with the tonic, when taken in number 0 capsules, and when used in connection with the chest pads, when, in truth and in fact, it was not so effective when used as described or when taken in any capsule or when used with any chest pads.

On December 13, 1916, the case having come on for trial before the court, after the submission of evidence and arguments by counsel the information was dismissed, as will more fully appear from the following decision by the court (Trippet, D. J.).

This action is brought under the paragraph denominated third, of section 8, of the Food and Drug Act, approved June 30, 1906. That third paragraph reads as follows:

"If its package or label shall bear or contain any statement, design, or device, regarding the curative or therapeutic effect of such article or any of the ingredients or substances contained therein which is false and fraudulent" it shall be deemed misbranded within the meaning of the act.

The action is one alleging that this shipment in interstate commerce contained a misbranding under the paragraph quoted. It is necessary for the Government to establish that the package or label was both false and fraudulent. The word "Tuberclecide" is used, and that is claimed to be a misbranding. The word "Tuberclecide" is a coined word. It has no meaning aside from the meaning which is given to it by the people that coined it and put it out. The evident purpose of the word, and of the representations accompanying the word, is to indicate that it is a remedy or cure for tuberculosis. The representations do not go any further, as I understand it, than to assert that it is a remedy for tuberculosis. Now, let us consider first whether or not this thing is false. I want it distinctly understood that I have not decided, and will not decide, because it is not necessary, that this medicine will cure or will not cure, that it will remedy or will not remedy, tuberculosis. It is not necessary for me to decide that it is or is not a remedy for it, and I am not going to decide that. I may say, however, that that is one of the things which it was necessary for the Government to prove—that the claims made for this medicine were false. The Government produced physicians, the most eminent in this city, graduates of the best colleges, who testified upon the subject, and I take it from their testimony that they conclude that there is no cure, in the sense in which that word is understood, for tuberculosis; that there is no specific remedy for it. In that connection, however, I do not construe this medicine as being advertised as a specific. I think it is fair to say that they do not advertise that it is a specific for consumption. The physicians brought by the Government testified that creosote carbonate has been discarded, as a remedy for tuberculosis, for a great many years. Creosote carbonate is one of the ingredients of this medicine. According to the analysis given by the chemist testifying on behalf of the Government, that is the principal ingredient of this medicine. Now, the defense brings an equal number of physicians. So far as I know, they are regular physicians, of good repute, graduates from good colleges, who testify that creosote carbonate is used to-day as a remedy for tuberculosis. They not only do that, but they bring standard medical works, one printed this year, which say that it is used as a remedy for tuberculosis. Aside from that, however, the Government produced a chemist who testified that he analyzed a bottle of the stuff, and it seems that he used practically all of the contents of the bottle to make the analysis; there is not a half a teaspoonful left in the bottle. He found certain things in this bottle. The man that got up this medicine testified that it had many other things in it, at least four more ingredients than the chemist gave. The Government offers no proof whatever that the testimony of that man is false. There is no proof offered on the subject, but I believe it is a fact that chemists can not always tell what is in a mixture. It seems to me that if the Government claimed that this medicine did not contain the four other things which the man that manufactured it said it contained, it was up to the Government to produce that testimony. The Government has another quantity of this medicine, and refused to produce it for the defense. I do not like that attitude.

Now, these physicians, on behalf of the Government, testified that a medicine containing the ingredients which the Government chemist testified this medicine contains, would have no remedial effect upon a consumptive. They were testifying about this medicine as analyzed by this chemist. They were not testifying about this medicine according to its true properties as proven by undisputed evidence in this case. There are four other ingredients in this medicine according to the undisputed testimony of the manufacturer. They do not say anything about the medicine as it is proven to be; that is, about the actual ingredients of the medicine. I repeat that I am not deciding that this stuff is a remedy or is not a remedy for tuberculosis.

In addition to proving that the statements are not true, the Government must show that they are fraudulent. Now, a man may make a statement that is not true, but if he believes it to be true, and is warranted by his information in making the statement, it is not fraudulent. What do these people do that are going to buy this formula and sell this medicine. They get physicians to examine patients that have been treated with it. I think they had four physicians to investigate it, and these physicians advised them that it was a remedy for tuberculosis. Aside from that, they bring three physicians here who say that they have prescribed this stuff to patients, and that it has proven itself by experience to be a remedy. The Government doctors never prescribed it to any person, while one of the witnesses for the defense testified that he had treated 3,000 patients with it, with good results. Do not these people representing defendant have a right to act upon that? Can anybody say that they willfully falsified anything in the face of that testimony? We all know from our own observations that doctors disagree. I have heard them disagree in making sworn statements in this court many a time. Schools of physicians disagree. One school thinks that the other school does not know anything, and that they are practicing fraud and deception. Can it be fairly said that a man is practicing a fraud when he acts upon the advice of a physician, although other physicians disagree with him? Have we come to such a pass that fraud can be attributed to a man when he accepts the advice of a doctor, or several doctors, notwithstanding that other physicians may disagree with those whose advice he accepts? For my part, I can not see why a man can not act in perfectly good faith in following the advice of any doctor that he chooses to consult, if he acts with fair intelligence in getting that advice. The doctors that advised these people are all licensed physicians, and why could they not accept their advice?

Let me illustrate my idea of this case by a supposititious one. Take vaccine. Vaccine is a coined word. It means what the coiner of the word meant for it to mean; namely, that vaccine is a preventive of smallpox. Suppose a party should transport vaccine in interstate commerce und an advertisement that it was the only known remedy for preventing smallpox, and that it would prevent smallpox. Suppose the Government were to prosecute him under this statute. Suppose the Government could bring physicians who would testify that vaccine would not prevent smallpox; that it was not only not a preventive, but that it was positively injurious to those who used it. This is by no means an improbable presumption. Then the defense would bring in an array of physicians to testify that it would prevent smallpox. Would any court convict the man that shipped the article for fraud in misbranding it?

The prosecution in this case seems to want to make a point of the fact that the man who prepared the formula for Tuberclecide was not a licensed physician, nor a graduate of any college, although he did practice medicine for several years. Doctor Jenner, who discovered vaccine, did not do it by any scientific method. He discovered it from deduction from the fact that milkmaids did not have smallpox, or if they did have it at all, they had it only in a mild form. It did not take a graduate from any college, or a licensed physician to make that deduction, and the same might probably be said concerning Tuberclecide.

I can not see how these people were practicing a fraud in the face of the testimony in the case. They believed they were doing good.

The case will be dismissed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5617. Adulteration of apples. U. S. * * * v. Christian H. Musselman (Musselman Canning Co.). Plea of guilty. Fine, $25. (F. & D. No. 7020. I. S. No. 8994-m.)

On May 14, 1917, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Christian H. Musselman, trading as the Musselman Canning Co., Biglerville, Pa., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 13, 1916, from the State of Pennsylvania into the State of Maryland, of a quantity of an article labeled in part, "Musselman's Choice Canned Apples. Packed by Musselman Canning Co., Biglerville, Pa."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that each of three cans examined was leaky, the contents of two of the cans were badly decomposed, and the contents of the third can were not fit for food.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid vegetable substance.

On May 15, 1917, the defendant entered a plea of guilty to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

5618. Adulteration and misbranding of "Baldwin's Cayuga Natural Medicated Spring Water." U. S. * * * v. Lucius Baldwin and Fred O. Baldwin (Lucius Baldwin & Son). Pleas of guilty. Fine, $100. (F. & D. No. 7025. I. S. Nos. 871-k, 2161-k, 1917-l.)

On June 12, 1917, the United States attorney for the Northern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Lucius Baldwin and Fred O. Baldwin, trading as Lucius Baldwin & Son, Cayuga, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on or about April 8, 1915, September 7, 1915 and June 3, 1915, from the State of New York into the State of New Jersey, of quantities of an article labeled in part, "Baldwin's Cayuga Natural Medicated Spring Water," which was adulterated and misbranded.

Analyses of samples of the article by the Bureau of Chemistry of this department showed the following results:

Ions:	Milligrams per liter.
Silica (SiO_2)	4.0
Sulphuric acid (SO_4)	1,680.0
Bicarbonate acid (HCO_3)	244.0
Chlorin (Cl)	6.0
Calcium (Ca)	576.4
Magnesium (Mg)	114.8
Sodium (Na) by difference	21.4
	2,646.6

Hypothetical combinations:	
Sodium chlorid (NaCl)	9.9
Sodium sulphate (Na_2SO_4)	54.2
Magnesium sulphate ($MgSO_4$)	568.2
Calcium sulphate ($CaSO_4$)	1,686.2
Calcium bicarbonate ($Ca(HCO_3)_2$)	324.1
Silica (SiO_2)	4.0
	2,646.6

	Bottle No. 1.	Bottle No. 2.
Ammonia, free (N)	None.	Trace.
Ammonia, albuminoid (N)	0.050	0.050
Nitrogen as nitrites	.072	.056
Nitrogen as nitrates	None.	None.

Number of organisms per cc developing after 2 days on gelatin at 20° C ranged from 600 to 39,000 and on plain agar at 37° C from 190 to 4,600 in the 25 bottles examined. Lactose fermentation tubes after 2 days at 37° C showed gas developing in 5 cc quantities from 25 bottles, in 1 cc quantities from 23 bottles, in 0.1 cc quantities from 16 bottles, in 0.01 cc quantities from 5 bottles, in 0.001 cc quantity from 1 bottle. B. coli were isolated from each bottle.

Adulteration of the article was alleged in the information for the reason that it consisted in part of a filthy, decomposed, and putrid animal substance.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely

and fraudulently represented it as a cure for Bright's disease, diabetes, liver complaint, all kidney afflictions, dyspepsia and other disorders of the stomach, all affections of the bladder and urinary organs, rheumatism in all forms, jaundice, salt rheum, and all skin diseases, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that the article was in package form, and the quantity of the contents of the packages was not plainly and conspicuously marked on the outside thereof in terms of weight, measure, or numerical count.

On June 20, 1917, the defendants entered pleas of guilty to the information, and the court imposed a fine of $100.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5619. Misbranding of "Phuton Kidney Remedy." U. S. * * * v. Mastin L. Williams. Plea of guilty. Fine, $5 and costs. (F. & D. No. 7062. I. S. No. 7265-h.)

On February 16, 1916, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Mastin L. Williams, Arkansas City, Kans., alleging shipment by said defendant, in violation of the Food and Drugs Act, as amended, on or about March 6, 1914, from the State of Kansas into the State of Wisconsin, of a quantity of an article labeled in part, "Phuton Kidney Remedy," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that it consisted largely of water with about 3.5 per cent alcohol and 3.65 grams solids per 100 cc., consisting largely of plant extractive. It contained also a small amount of ammonium chlorid, salicylic and tannic acids, oils of sassafras and winter green.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as effective for the relief of and as a remedy for all kidney and bladder diseases, for the relief of and for dissolving and removing gravel and stone from the bladder, for the relief of and as a remedy for Bright's disease, diabetes, and incontinence of urine in adults and children, when, in truth and in fact, it was not.

On September 25, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $5 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5620. Adulteration and misbranding of tablets acid acetylo salicylic. U. S. * * * v. 1 Case of * * * Compressed Tablets, Acid Acetylo Salicylic. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7092. I. S. No. 10527–l. S. No. C–400.)

On December 3, 1915, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 1 case containing 7 cartons, each containing 1,000 tablets acid acetylo salicylic, remaining unsold in the original unbroken packages at Jefferson, Iowa, alleging that the article had been shipped on or about November 23, 1915, by the Medlin Brokerage Co., Omaha, Nebr., and transported from the State of Nebraska into the State of Iowa, and charging adulteration and misbranding in violation of the Food and Drugs Act as amended.

It was alleged in substance in the libel that the statement, to wit, "1000 Compressed Tablets, Acid Acetylo-Salicylic," borne on the cartons containing the article, was false and fraudulent in that the tablets contained little or no aspirin but showed the presence of acetanilid, the said tablets being adulterated in violation of section 7, paragraph 2, and also misbranded in violation of section 8, first general paragraph, and paragraphs 1 and 2 under drugs.

On December 11, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5621. Adulteration of tomato pulp. U. S. * * * v. 100 Cases * * * of Tomato Pulp. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7101. I. S. No. 12516-l. S. No. C-406.)

On December 10, 1915, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 Cases of Tomato Pulp, consigned on October 15, 1915, by the Rider Packing Co., Crothersville, Ind., and remaining unsold in the original unbroken packages at Louisville, Ky., alleging that the article had been shipped and transported from the State of Indiana into the State of Kentucky, and charging adulteration in violation of the Food and Drugs Act. The article was labeled, in part, "Rider's Class A Brand Tomato Pulp.'

Adulteration of the article was alleged in the libel for the reason that it contained, and in part consisted of, a partially decomposed vegetable substance.

On February 7, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5622. Adulteration of a compounded physician's prescription and tincture of iodin. U. S. * * * v. Joseph F. Arth (Joseph F. Arth & Co.). Plea of guilty. Fine, $20. (F. & D. No. 7119. I. S. Nos. 8040-h, 8044-h.)

On July 7, 1916, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against Joseph F. Arth, trading as Joseph F. Arth & Co., Washington, D. C., alleging the sale by said defendant, at the District aforesaid, on April 14, 1914, of an article of drugs compounded from a physician's prescription and of a quantity of "Tinct. Iodine," which were adulterated.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed the following results:

The article compounded from the physician's prescription.

4.44 grains phenacetin per powder.

3.86 grains salol per powder.

The tincture of iodin.

Iodin (grams per 100 cc)	4.00
Potassium iodid (grams per 100 cc)	7.98

Adulteration of the article compounded from the physician's prescription was alleged in the information for the reason that its strength and purity fell below the professed standard and quality under which it was sold in that the prescription aforesaid called for 60 grains each of phenacetin and salol in the 12 powders, whereas, in truth and in fact, said 12 powders did not contain 60 grains of phenacetin and 60 grains of salol, but contained 53.28 grains of phenacetin and 46.32 grains of salol.

Adulteration of the Tinct. Iodine was alleged for the reason that it was offered for sale and sold under and by a name recognized in the United States Pharmacopœia, and differed from the standard of quality and purity as determined by the test laid down in the said Pharmacopœia, official at the time of the investigation of the article, in that it contained potassium iodid 7.98 grams, and iodin 4 grams per 100 cubic centimeters, whereas said Pharmacopœia provides that it should contain not less than 5 grams of potassium iodid, and not more than 6.86 grams of iodin, per 100 cubic centimeters, and the standard of strength, quality, and purity of the article was not declared on the container thereof.

On July 17, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $20.

C. F. Marvin, *Acting Secretary of Agriculture.*

5623. Adulteration of milk. U. S. * * * v. George C. Taylor. Tried to the court and a jury. Verdict of not guilty in one case. Verdict of guilty in one case. Fine, $25 and costs. (F. & D. Nos. 7150, 7671. I. S. Nos. 11711–l, 11712–l, 21629–h, 21630–h, 21654 to 21672–h, 21634 to 21653–h, 21687 to 21697–h.)

On February 25, 1916, and December 26, 1916, the United States attorney for the Southern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district two informations against George C. Taylor, Smithboro, Ill., alleging shipment by said defendant, in violation of the Food and Drugs Act, on or about July 13, 1914, July 14, 1914, July 10, 1914, and September 8, 1915 (2 shipments), from the State of Illinois into the State of Missouri, of quantities of milk which was adulterated.

Examination of samples of the article in each of the shipments by the Bureau of Chemistry of this department showed that it contained added water and that in two of the shipments the product was filthy and decomposed.

Adulteration of the article in the shipments of July 13, 1914, July 14, 1914, and July 10, 1914, was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength. Adulteration of the article in one of the shipments on September 8, 1915, was alleged for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for milk, which the article purported to be; and for the further reason that the article consisted in part of a filthy, putrid, and decomposed animal substance. Adulteration of the article in the other shipment on September 8, 1915, was alleged for the reason that it consisted in part of a filthy, putrid, and decomposed animal substance.

On June 7, 1917, the cases came on for trial before the court and a jury, and after the submission of evidence and argument by counsel for the defendant, the following charge was delivered to the jury by the court (Humphrey, D. J.):

Gentlemen of the jury: The United States attorney waives any argument.

The court charges you the matter you are considering is an information in two counts brought against this defendant by the United States attorney, charging him with a violation of section 2 of the Food and Drugs Act passed by Congress on the 30th of June, 1906. The purpose of that act is to save the people from adulterated food. Congress only has jurisdiction of those matters which go into interstate commerce, therefore, it only becomes a Government case when it passes from one State or Territory to another.

The two counts in this information charge, one, adulteration by the addition of water and the other by the presence of foreign matter—filthy matter as well.

If you believe from the evidence beyond a reasonable doubt that the defendant at the time and place in question did ship in interstate commerce milk adulterated, misbranded, as charged in the information, then you will find him guilty in either count of the information.

On the other hand, if you do not believe from the evidence beyond a reasonable doubt that the milk in question did contain foreign matter and the water so testified to by the Government officers, then you will find him not guilty.

The fact of the shipments is not disputed. The sole question is as to the presence of the foreign matter—the water and the filth. The intention of the defendant in the premises is not material. The law does not leave that to be settled by good intentions. I don't know what more I can say to you about it.

You have heard the evidence, the tests made by the officers, and the result of those tests. There is no testimony on the other side.

You have a right to take the information and the exhibits, all of them. There are two cases. They are numbered, respectively, 15674 and 15613. Two forms of verdict have been prepared in each case, one finding the defendant guilty; the other finding him not guilty, so you will return two verdicts. Go with the officer and consider of your verdict.

The jury thereupon retired, and after due deliberation returned a verdict of not guilty in one of the cases and a verdict of guilty in the other case, which was based on the shipments made September 8, 1915, and the court imposed a fine of $25 and costs.

C. F. MARVIN, *Acting Secretary of Agriculture.*

5624. Adulteration and misbranding of tomatoes. U. S. * * * v. 600 Cases of Tomatoes. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. No. 7155. I. S. No. 1254-l. S. No. E-496.)

On January 10, 1916, the United States attorney for the Eastern District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 600 cases, each containing two dozen cans of tomatoes, consigned by J. Frank Lednum, Preston, Md., remaining unsold in the original unbroken packages at Philadelphia, Pa., alleging that the article had been shipped on or about October 5, 1915, and transported from the State of Maryland into the State of Pennsylvania, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part "* * * Queen Esther Brand Tomatoes Packed by J. Frank Lednum, Preston, Md. * * *."

Adulteration of the article was alleged in the libel for the reason that water had been mixed and packed therewith so as to reduce and lower and injuriously affect its quality and strength, and had been substituted in part for tomatoes.

Misbranding was alleged in substance for the reason that the labels on the retail packages of the article bore the statement, to wit, "Queen Esther Brand Tomatoes," regarding the article and the ingredients and substances contained therein, which was false and misleading in that it indicated to the purchaser that the packages contained tomatoes unmixed with water, when, in fact, water had been added to the tomatoes.

On February 21, 1916, the said J. Frank Lednum, claimant, having admitted the allegations of the libel, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to the said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,200 in conformity with section 10 of the act, conditioned in part that the product should be relabeled under the supervision of this department.

C. F. Marvin, *Acting Secretary of Agriculture.*

5625. Adulteration of tomatoes. U. S. * * * v. 100 Cases Strained Tomatoes. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7160. I. S. No. 3529-l. S. No. E-524.)

On January 14, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 100 cases of strained tomatoes, labeled "Arlo Strained Tomatoes * * * Packed at East Brooklyn Pres. Works, East Brooklyn, Md.," alleging that the article had been shipped on or about November 4, 1915, by the Martin Wagner Co., Baltimore, Md., and transported from the State of Maryland into the State of New York, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it consisted wholly and (or) in part of a decomposed and putrid vegetable substance.

On February 14, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5626. Misbranding of "Byrnes Baby Relief." U. S. * * * v. 12 Cartons of "Byrnes Baby Relief." Consent decree of condemnation, forfeiture, and destruction. (F. & D. No. 7163. I. S. No. 2063–l, 2053–l. S. No. E–526.)

On January 17, 1916, the United States attorney for the Eastern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 12 cartons of "Byrnes Baby Relief," alleging that the article had been shipped on or about December 31, 1915, by the Byrne Drug Co., Archbald, Pa., and transported from the State of Pennsylvania into the State of New York, and charging misbranding in violation of the Food and Drugs Act, as amended. The article was labeled in part: "For (or 'Relief for' or 'A safe medicine for') wind colic, sour stomach, nervousness, crying, sleepless and fretful babies. Also use when teething, will prevent diarrhœa and cholera infantum."

Misbranding of the article was alleged in the libel for the reason that the product contained on the label of its container statements regarding the curative or therapeutic effect of such drug and the ingredients and substances therein, which were false and fraudulent.

On December 16, 1916, the said Byrne Drug Co., claimant, having withdrawn its answer to the libel and consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that the claimant should pay the costs of the proceedings.

C. F. Marvin, *Acting Secretary of Agriculture.*

5627. Adulteration of sardines. U. S. * * * v. 200 Cases of Sardines. Consent decree of condemnation and forfeiture. Good portion released. Unfit portion destroyed. (F. & D. No. 7172. I. S. No. 1834–l. S. No. E–539.)

On January 26, 1917, the United States attorney for the District of Maryland, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases of sardines, consigned on or about November 26, 1915, remaining unsold in the original unbroken packages at Baltimore, Md., alleging that the article had been shipped by the Seacoast Canning Co., Eastport, Me., and transported from the State of Maine into the State of Maryland, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part "Sea Lion American Sardines. Packed in Mustard Sauce * * *."

Adulteration of the article was alleged in the libel for the reason that it consisted in part of a decomposed animal substance.

On June 8, 1916, the said Seacost Canning Co., claimant, having filed its answer, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be examined under the supervision of a representative of this department, the unfit portion to be destroyed and the good portion to be delivered to said claimant upon the payment of the costs of the proceedings.

C. F. Marvin, *Acting Secretary of Agriculture.*

5628. Adulteration of "Mexican Chile Peppers." U. S. * * * v. 2 Bales of Mexican Chile Peppers. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7197. I. S. No. 11343–l. S. No. C–435.)

On February 1, 1916, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 2 bales of Mexican chile peppers, consigned on or about January 14, 1916, by J. Armengol, Chicago, Ill., remaining unsold in the original unbroken packages at Louisville, Ky., alleging that the article had been shipped and transported from the State of Illinois into the State of Kentucky, and charging adulteration in violation of the Food and Drugs Act.

Adulteration of the article was alleged in the libel for the reason that it contained, and in part consisted of, a decomposed and filthy vegetable substance.

On March 17, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5629. Misbranding of "Hamby's Genuine Dawson Springs Water Concentrated." U. S. * * * v. The Dawson Salts & Water Co., a corporation. Plea of guilty. Fine, $50. (F. & D. No. 7205. I. S. No. 5771-h.)

On May 5, 1916, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Dawson Salts & Water Co., a corporation, Dawson Springs, Ky., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about June 22, 1914, from the State of Kentucky into the State of Missouri, of a quantity of an article labeled in part, "Hamby's Genuine Dawson Springs Water Concentrated," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Ions:	Gram per liter.
Sulphuric acid (SO_4)	100.00
Bicarbonate acid (HCO_3)	0.20
Nitric acid (NO_3)	0.19
Chlorin (Cl)	0.22
Iron (Fe)	0.00
Calcium (Ca)	0.56
Magnesium (Mg)	19.14
Sodium (Na) by difference	11.32
Total	131.63
Hypothetical combinations:	
Sodium nitrate ($NaNO_3$)	0.26
Sodium chlorid (NaCl)	0.35
Sodium sulphate (Na_2SO_4)	34.32
Magnesium sulphate ($MgSO_4$)	94.76
Calcium sulphate ($CaSO_4$)	1.70
Calcium bicarbonate ($Ca(HCO_3)_2$)	0.24
Total	131.63

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for all diseases of the liver, kidneys, stomach, and bowels; as a cure for dropsy, indigestion, dyspepsia, Bright's disease, rheumatism, gall stones, piles, and female troubles; as a remedy for all bilious diseases, fever and ague, dysentery of a bilious type, eczema, obstructed menstruation, all diseases arising from an inactive liver and kidneys, all liver and kidney troubles, and malarial diseases, when, in truth and in fact, it was not; and for the further reason that certain statements appearing in the booklet accompanying the article falsely and fraudulently represented it as a cure for jaundice, appendicitis, nephritis, Bright's disease, dilation of the stomach, gastritis or catarrh of the stomach, duodenitis or catarrh of the bowels, cystitis or catarrh of the bladder, dysentery or catarrh of the larger intestines, neurasthenia, chronic eczema, rheumatism, gout or gouty rheumatism, renal, cystic, or biliary calculi, stone in the kidney, bladder, or bile ducts, blood diseases, and every trouble arising from the stomach, liver, and kidneys; diabetes, albuminuria, and glycosuria, when, in truth and in fact, it was not. Misbranding was alleged for the further reason that the statements appearing on the label, regarding the article and the ingredients and substances contained therein, to wit, (on bottle) "Hamby's Genuine Dawson Springs

Water Concentrated * * * (on carton) The Genuine Concentrated Dawson Springs Water * * * This remedy is * * * simply a medicinal water in a concentrated form obtained by concentrating the water from Hamby's Salts, Iron, and Lithia Well. * * * This water when diluted will have the same effect upon the system as the original water, * * *," were false and misleading in that they indicated to purchasers thereof that it consisted wholly of concentrated mineral spring water obtained by concentrating the water of Dawson Springs, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it consisted wholly of concentrated mineral spring water obtained by concentrating the water of Dawson Springs, when, in truth and in fact, it did not, but consisted of, to wit, a mixture of concentrated mineral spring water obtained by concentrating the water of Dawson Springs and added sodium and magnesium sulphate; and for the further reason that the statements regarding the article and the ingredients and substances contained therein appearing on the label of the carton, to wit,

"*Analysis of Genuine Dawson Springs Water Concentrated.*

	Grains per U. S. gallon.
Silicic acid	2.6
Bicarbonate of iron	55.6
Oxid of aluminum	2.3
Calcium sulphate	1,483.6
Sodium chlorid	74.6
Magnesium sulphate	5,167.3
Bicarbonate of calcium	368.8
Sodium sulphate	3,324.5
Sodium phosphate	42.7
Potassium sulphate	1,266.7
Manganese bicarbonate	28.1
Sodium bicarbonate	42.3
Calcium nitrate	51.0
Lithium bicarbonate	Heavy Trace.
Sodium bromid	Heavy Trace.
Sodium borate	Trace.
Organic matter	None.
	11,910.1"

were false and misleading in that they indicated to purchasers thereof that the article contained per gallon, among other ingredients, 55.6 grains bicarbonate of iron, 1,483.6 grains calcium sulphate, 74.6 grains sodium chlorid, 5,167.3 grains magnesium sulphate, 368.8 grains bicarbonate of calcium, 3,324.5 grains sodium sulphate, 42.3 grains sodium bicarbonate, 51.0 grains calcium nitrate, heavy traces of lithium bicarbonate and sodium bromid, and a trace of sodium borate, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that it contained among other ingredients the aforementioned substances in the quantities indicated, when, in truth and in fact, it contained more magnesium sulphate, less bicarbonate of iron, calcium sulphate, sodium chlorid, bicarbonate of calcium, sodium sulphate, and calcium nitrate, and no sodium bicarbonate, lithium bicarbonate, sodium borate, and sodium bromid.

On November 27, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5630. Adulteration of oysters. U. S. * * * v. David M. Faunce. Plea of guilty. Fine, $20. (F. & D. No. 7218. I. S. Nos. 3419–l, 3420–l, 3445–l.)

On July 11, 1916, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of the District aforesaid an information against David M. Faunce, Washington, D. C., alleging the offering for sale and the sale and delivery by the said defendant, at the District aforesaid, in violation of the Food and Drugs Act, on December 3, 1915 (2 sales), and December 15, 1915, of quantities of oysters which were adulterated.

Analyses of samples of the article by the Bureau of Chemistry of this department showed the substitution of a material amount of water for oysters.

Adulteration of the article in each case was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for oysters, which the article purported to be.

On July 11, 1916, the defendant entered a plea of guilty to counts 1 and 3 of the information, charging adulteration of the article in one of the sales on December 3, 1915, and of the sale on December 15, 1915, and the court imposed a fine of $20. Count 2 of the information, charging adulteration of the article in the other sale on December 3, 1915, was nol-prossed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5631. Adulteration of oysters. U. S. * * * v. James C. Barry. Plea of guilty. Fine, $30. (F. & D. No. 7219. I. S. Nos. 3429–l, 3459–l, 3461–l.)

On July 11, 1916, the United States attorney for the District of Columbia, acting upon a report by the Secretary of Agriculture, filed in the Police Court of said District, an information against James C. Barry, Washington, D. C., alleging the offering for sale and the sale by said defendant, at the District aforesaid, in violation of the Food and Drugs Act, on December 9, 1915, and December 16, 1915 (2 sales), of quantities of oysters which were adulterated.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed the substitution of a material amount of water.

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, water, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for oysters, which the article purported to be.

On July 11, 1916, the defendant entered a plea of guilty to the information, and the court imposed a fine of $30.

C. F. Marvin, *Acting Secretary of Agriculture.*

5632. Misbranding of glucose preserves. U. S. * * * v. The Castleman-Blakemore Co., a corporation. Plea of guilty. Fine, $15. (F. & D. No. 7228. I. S. Nos. 11956-k, 11959-k, 15467-k.)

On June 26, 1916, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Castleman-Blakemore Co., a corporation, Louisville, Ky., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about September 24, 1914, from the State of Kentucky into the State of Alabama, and on or about February 6, 1915, and March 10, 1915, from the State of Kentucky into the State of Louisiana, of quantities of an article labeled in part, "Bob White Brand * * * Glucose Preserves, * * * The Castleman-Blakemore Co. Incorporated, Louisville, Ky., U. S. A.," which was misbranded.

Analyses of samples of the article in each shipment by the Bureau of Chemistry of this department showed the product to be short weight.

Misbranding of the article in each shipment was alleged in the information for the reason that the following statement regarding the article and the ingredients and substances contained therein appearing on the label, to wit, "Net Weight Contents 13½ ozs.," was false and misleading in that it indicated to purchasers thereof that each of the packages contained thirteen and one-half ounces of the article of food, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchasers into the belief that each package contained thirteen and one-half ounces of the said article, when, in truth and in fact, it did not, but contained a less amount thereof, and for the further reason that it consisted of food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count.

On October 10, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $15.

C. F. Marvin, *Acting Secretary of Agriculture.*

5633. Adulteration and misbranding of oats. U. S. * * * v. 334 Sacks of * * * Oats. Decree of condemnation and forfeiture. Goods released on bond. (F. & D. No. 7249. I. S. No. 12319–l. S. No. C–462.)

On March 20, 1916, the United States attorney for the Eastern District of Oklahoma, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 334 sacks of so-called oats, remaining unsold in the original unbroken packages at Sapulpa, Okla., alleging that the article had been shipped on or about March 15, 1916, by the Nelson Grain Co., Kansas City, Mo., and transported from the State of Missouri into the State of Oklahoma, and charging adulteration and misbranding in violation of the Food and Drugs Act. The sacks containing the article were labeled in part: "Oats."

Adulteration of the article was alleged in substance in the libel for the reason that barley had been mixed and packed therewith so as to reduce and lower the quality and strength of the oats and had been substituted in part for the article.

Misbranding was alleged for the reason that the statement "oats" was false and misleading, in view of the composition of the product, and for the further reason that said product was an imitation of, and was offered for sale under the distinctive name of, another article, and for the further reason that it was labeled and branded so as to deceive and mislead the purchaser.

On April 20, 1916, the said Nelson Grain Co., claimant, having stated that it had nothing to say as to why an order of condemnation should not be made, it was adjudged by the court that the property should be released to said claimant upon payment of the costs of the proceedings, the claimant having theretofore filed bond in conformity with section 10 of the act. On October 24, 1916, a supplemental order of the court was entered whereby its former order was enlarged, modified, and amended so as to declare the product to have been adulterated and misbranded and formally to forfeit it.

C. F. Marvin, *Acting Secretary of Agriculture.*

5634. Misbranding of cottonseed meal. U. S. * * * v. Southern Cotton Oil Co., a corporation. Plea of guilty. Fine, $100 and costs. (F. & D. No. 7262. I. S. No. 13520-k.)

On May 17, 1916, the United States attorney for the Eastern District of Arkansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Southern Cotton Oil Co., a corporation, doing business at Little Rock, Ark., alleging shipment by said company, in violation of the Food and Drugs Act, on or about January 6, 1915, from the State of Arkansas into the State of Indiana, of a quantity of an article labeled in part, "Dixie Brand Cottonseed Meal," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Crude fiber (per cent)	14.4
Crude protein (per cent)	36.7

Misbranding of the article was alleged in the information for the reason that the statement, to wit, "Guarantees this Dixie Brand cottonseed meal to contain not less than * * * 41.0% of crude protein, not more than 12.0% of crude fibre," was false and misleading in that it represented that the article contained not less than 41 per cent of crude protein and not more than 12 per cent of crude fiber, and for the further reason that it was labeled as aforesaid so as to deceive and mislead the purchaser into the belief that it contained not less than 41 per cent of crude protein and not more than 12 per cent of crude fiber, when, in truth and in fact, it contained less than 41 per cent of crude protein and more than 12 per cent of crude fiber, to wit, approximately 36.7 per cent of crude protein and 14.4 per cent of crude fiber.

On April 27, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5635. Misbranding of "Humphreys' Pile Ointment Witch Hazel Oil (Compound)." U. S. * * * v. Humphreys' Homeopathic Medicine Co., a corporation. Plea of guilty. Fine, $25. (F. & D. No. 7284. I. S. No. 3309–l.)

On October 2, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Humphreys' Homeopathic Medicine Co., a corporation, New York, N .Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on July 16, 1915, from the State of New York into the Territory of Porto Rico, of a quantity of an article labeled in part, "Humphreys' Pile Ointment Witch Hazel Oil (Compound)," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed that the preparation was essentially a camphor ointment on a lard base.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its label falsely and fraudulently represented it as a remedy for piles, fissures, bleeding of the rectum, contraction from burns, indolent ulcers, fistulas, corns and bunions, and subacute rheumatism; and as a cure for piles, bleeding of the anus, burns and scalds, contraction which results from burns, fistulas, rheumatic swellings, pimples, carbuncles, and cancer, when, in truth and in fact, it was not.

On February 21, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25.

C. F. Marvin, *Acting Secretary of Agriculture.*

5636. Adulteration and misbranding of vinegar. U. S. * * * v. 65 Barrels * * * of * * * Pure Cider Vinegar. Consent decree of condemnation and forfeiture. Product released on bond. (F. & D. No. 7312. I. S. No. 12325–l. S. No. C–470.)

On April 17, 1916, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 65 Barrels of so-called pure cider vinegar remaining unsold in the original unbroken packages at Kansas City, Kans., alleging that the article had been shipped on or about March 31, 1916, by the Gist-Leo Vinegar Co., Springfield, Mo., and transported from the State of Missouri into the State of Kansas, and charging adulteration and misbranding in violation of the Food and Drugs Act. The barrels were labeled "T. B. M. Best Made Pure Cider Vinegar."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of distilled vinegar or dilute acetic acid which had been mixed and packed therewith and substituted for the pure product in such a manner as to reduce and lower and injuriously affect its quality and strength.

Misbranding was alleged in substance for the reason that the statement on the labels on the barrels, to wit, "T. B. M. Best Made Pure Cider Vinegar," was false and misleading and calculated to induce the purchaser to believe that the so-called pure cider vinegar was pure, when, in truth and in fact, it was not, but was adulterated as above set forth.

On June 21, 1917, the case having come on to be heard on the pleadings, and the court having considered the pleadings and the evidence, judgment of condemnation and forfeiture was entered, providing among other things that the vinegar might be released upon payment of the costs of the proceedings and the execution of bond in the sum of $200, in conformity with section 10 of the act, conditioned in part that the product should be properly relabeled. On June 30, 1917, the Gist-Leo Vinegar Co., Springfield, Mo., having executed bond as directed in the decree and the costs of the proceedings having been paid, it was ordered by the court that the product should be released to said claimant company.

C. F. Marvin, *Acting Secretary of Agriculture.*

5637. Adulteration of ketchup. U. S. * * * v. 200 Cases * * * of Tomato Ketchup. Consent decree of condemnation, forfeiture, and destruction. Containers ordered released to claimant upon payment of costs. (F. & D. No. 7322. I. S. Nos. 11546–l, 13002–l. S. No. C–477.)

On April 18, 1916, the United States attorney for the District of Nebraska, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 200 cases, each containing 24 bottles of tomato ketchup, remaining unsold in the original unbroken packages at Omaha, Nebr., alleging that the article had been shipped on or about January 22, 1916, by the Naboth Vineyards, Brocton, N. Y., and transported from the State of New York into the State of Nebraska, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part "* * * Naboth Brand, Tomato Catsup, Naboth Vineyards, Brockton, N. Y. U. S. A. * * *."

Adulteration of the article was alleged in the libel for the reason that it consisted in whole or in part of a filthy, decomposed, and putrid animal and vegetable substance.

On June 28, 1917, the said Naboth Vineyards, claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal and that the bottles and cases containing the article should be delivered to said claimant and that the claimant should pay the costs of the proceedings.

C. F. Marvin, *Acting Secretary of Agriculture.*

5638. Adulteration of pork and beans. U. S. * * * v. 410 Cases Pork and Beans. Oceana Canning Co., claimant. Consent decree of condemnation and forfeiture. Product ordered released on bond. (F. & D. Nos. 7339, 7341, 7356, 7361. I. S. Nos. 11368–l, 11366–l, 11369–l, 11367–l. S. Nos. C–488, C–486, C–495, C–500.)

On April 21, 1916 and April 26, 1916, the United States attorney for the Western District of Kentucky, acting upon reports by the Secretary of Agriculture, filed in the District Court of the United States for said district libels praying the seizure and condemnation of 265 cases, 45 cases, and 100 cases of Canned Pork and Beans, consigned on March 27, 1916, by the Oceana Canning Co., Shelby, Mich., remaining unsold in the original unbroken packages at Louisville, Ky., alleging that the article had been shipped and transported from the State of Michigan into the State of Kentucky, and charging adulteration in violation of the Food and Drugs Act. The article was labeled, in part: "Cupid Brand Pork and Beans. Select quality."

Adulteration of the article was alleged in the libels for the reason that it consisted of a partially decomposed vegetable substance.

On April 20, 1917, an order was entered by agreement of the parties, consolidating the cases filed under separate libels into one action, and on the same date the Oceana Canning Co., claimant, having withdrawn its answer and having elected to make no defence, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be delivered to said claimant upon the payment of the costs of the proceedings and the execution of a bond in the sum of $1,500, in conformity with section 10 of the act.

C. F. Marvin, *Acting Secretary of Agriculture.*

5639. Misbranding of "Giles' Germicide." U. S. * * * v. Giles Remedy Co., a corporation. Plea of guilty. Fine, $50. (F. & D. No. 7347. I. S. No. 7430-h.)

On August 17, 1916, the United States attorney for the Northern District of Illinois, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Giles Remedy Co., a corporation, Chicago, Ill., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on or about May 5, 1914, from the State of Illinois into the State of Nebraska, of a quantity of an article labeled in part, "Giles' Germicide," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Specific gravity at 15.6° C.	0.9155
Nonvolatile residue at 100° C. (grams per 100 cc)	77.75
Camphor (grams per 100 cc)	4.04
Ash (grams per 100 cc)	0.02
Ether	Present
Linseed oil	Present

The preparation is an oily mixture containing chiefly linseed oil, ether, and camphor.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing, as the case might be, on its label or carton, or included in the circulars accompanying it, falsely and fraudulently represented it to be effective to kill germs and as a tonic and blood purifier, as a remedy for scores of diseases by removal of the one cause, and effective to destroy disease-producing germs within and without the body, and to neutralize and expel from the blood toxins of germs and all other poisons and impurities; as a remedy for chronic diseases resulting from germs and for acute germ diseases, and effective as a prompt destroyer of all disease germs and to remove every internal and external congestion or inflammation; as a remedy for rheumatism, asthma, catarrh, throat troubles, lung troubles, blood diseases, skin diseases, kidney affections, bladder affections, female diseases, diseases of the stomach and bowels; all ailments of an inflammatory nature, either internal or external; as a remedy that destroys all germs and expels their poisons from the system; as a cure and relief for consumption, asthma, pneumonia, and la grippe; as a cure for rheumatism, gout, blood poison, carbuncles, and boils; and effective to relieve all forms of congestion and inflammation, internal and external; and as a treatment for all diseases, acute or chronic; as a certain cure for piles; and as a remedy for all acute and chronic diseases of germ origin; for pleurisy, pneumonia, sore throat, diphtheria, la grippe, croup, measles, scarlet fever, chicken pox, smallpox, chills, fever and ague, malaria, cholera morbus, appendicitis, neuralgia, diarrhea, dysentery, inflamed eyes or eyelids, catarrh of the head, diseases of the throat and lungs, dyspepsia, indigestion, catarrh of the stomach, gout, lumbago, paralysis, kidney trouble, prostatic troubles, bladder troubles, gonorrhea and gleet, sexual weakness, erysipelas, eczema, syphilitic affections, all sores or skin eruptions, carbuncles, felons, boils, piles, all womb troubles, all tumors, all ulcerations, all inflammations, leucorrhea or whites, menstrual disorders and scrofula, when, in truth and in fact, it was not.

On June 29, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5640. Adulteration and misbranding of oats. U. S. * * * v. Callahan & Sons, a corporation. Plea of guilty. Fine, $25 and costs. (F. & D. No. 7348. I. S. No. 3137-k.)

On July 10, 1916, the United States attorney for the Western District of Kentucky, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Callahan & Sons, a corporation, Louisville, Ky., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 15, 1915, from the State of Kentucky into the State of West Virginia, of a quantity of oats, which were adulterated and misbranded. The article was labeled in part: (On sack) "160 lbs. Virginia White Oats Special."

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Oats (per cent)	69.6
Barley (per cent)	25.0
Screenings (per cent)	3.3

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, low grade barley, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in part for Virginia White Oats which the article purported to be.

Misbranding was alleged for the reason that the following statement regarding the article and the ingredients and substances contained therein, appearing on the labels of the sacks, to wit, "Virginia White Oats Special," was false and misleading in that it indicated to purchasers thereof that the said article consisted wholly of Virginia white oats, and for the further reason that it was labeled "Virginia White Oats Special," so as to deceive and mislead purchasers into the belief that said article consisted wholly of Virginia white oats, when, in truth and in fact, it did not, but did consist of, to wit, a mixture of oats and low grade barley.

On October 2, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5641. Misbranding of confectionery. U. S. * * * v. Hardie Bros. Co., a corporation. Plea of nolo contendere. Fine, $10 and costs. (F. & D. No. 7352. I. S. Nos. 2681–k, 2686–k.)

On January 30, 1917, the United States attorney for the Western District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Hardie Bros. Co., a corporation, Pittsburgh, Pa., alleging shipment by said company, in violation of the Food and Drugs Act, on or about April 9, 1915, and March 5, 1915, from the State of Pennsylvania into the State of West Virginia, of quantities of articles labeled in part, "Creamed Marbles * * * Hardie's Highland Chocolates * * *" and "Ice Cream Drops * * * Hardie's Highland Chocolates * * *," which were misbranded.

Analyses of the coatings of each article by the Bureau of Chemistry of this department showed the following results:

	"Creamed Marbles."	"Ice Cream Drops."
Total ash (sugar and fat free basis) (per cent)	8.03	9.87
Acid-insoluble ash (sugar and fat free basis) (per cent)	0.78	1.03
Crude fiber (sugar and fat free basis) (per cent)	7.80	9.38
Constants on the fat of the coating:		
Temperature of miscibility with acetic acid (degrees)	----	89.0
Reichert-Meissl number	1.7	0.86
Saponification number	201.22	202.0
Iodin number	30.62	33.2
Refractive index 40° C	1.4570	1.4580

These analyses show the coatings on these products to contain cocoa shells or dust and a fat or fats foreign to chocolate.

Misbranding of the article in each shipment was alleged in the information for the reason that the statements regarding the article and the ingredients and substances contained therein appearing on the labels, to wit, "Creamed Marbles * * * (or Ice Cream Drops) Hardie's Highland Chocolates * * *," together with the appearance of the article, were false and misleading in that they indicated to the purchaser thereof that the article was a genuine chocolate-coated product, and for the further reason that it was labeled as aforesaid, and bore the appearance of a chocolate-coated product, so as to deceive and mislead purchasers into the belief that the article was a genuine chocolate-coated product, when, in truth and in fact, it was not, but was a product coated with, to wit, a mixture of chocolate, a fat or fats foreign to chocolate, and cocoa shells or dust, and for the further reason that it was an imitation product, to wit, a product coated with a mixture of chocolate, a fat or fats foreign to chocolate, and cocoa shells or dust, and was offered for sale under the distinctive name of another article, to wit, creamed marbles chocolates (or ice cream drops chocolates).

On June 4, 1917, the defendant company entered a plea of nolo contendere to the information, and the court imposed a fine of $10 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5642. Adulteration of luncheon beans. U. S. * * * v. 250 Cases * * * Luncheon Beans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7358. I. S. Nos. 11466–l, 11467–l. S. No. C–491.)

On April 27, 1916, the United States attorney for the Northern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 250 cases of luncheon beans, remaining unsold and in the original unbroken packages at Dubuque, Iowa, alleging that the article had been shipped on or about December 31, 1915, by the Sycamore Preserve Works, Sycamore, Ill., and transported from the State of Illinois into the State of Iowa, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part, "Bunker Hill Brand * * * Luncheon Beans, Tomato Sauce * * *."

Adulteration of the article was alleged in the libel for the reason that it was colored, coated, and stained in a manner by which damage and inferiority were concealed, and for the further reason that it consisted in whole or in part of a decomposed vegetable substance.

On July 11, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5643. Adulteration of beans. U. S. * * * v. 25 Cases * * * of * * * Luncheon Beans. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7364. I. S. No. 11474–l. S. No. C–502.)

On May 1, 1916, the United States attorney for the Southern District of Iowa, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases, each containing four dozen cans of luncheon beans, remaining unsold in the original unbroken packages at Davenport, Iowa, alleging that the article had been shipped on or about February 21, 1916, by the Rossville Canning Co., Rossville, Ill., and transported from the State of Illinois into the State of Iowa, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Frisco Brand Luncheon Beans."

Adulteration of the article was alleged in substance in the libel for the reason that it consisted in whole or in part of a decomposed vegetable substance.

On April 26, 1917, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5644. Adulteration of oranges. U. S. * * * v. 25 Cases of Oranges. Default decree of condemnation, forfeiture, and destruction. (F. & D. No. 7384. I. S. No. 20231–l. S. No. W–75.)

On November, 27, 1915, the United States attorney for the District of Hawaii, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel for the seizure and condemnation of 25 cases of oranges, consigned on or about November 17, 1915, by Wellbank & Co., San Francisco, Cal., remaining unsold in the original unbroken packages at Hilo, Hawaii, alleging that the article had been shipped and transported from the State of California into the Territory of Hawaii, and charging adulteration in violation of the Food and Drugs Act.

It was alleged in the libel that the oranges were gathered before mature and were sweated for the purpose of giving them the appearance of ripe and mature oranges, whereas, as a matter of fact, they were green and immature, and their inferiority was concealed by said treatment, said oranges being immature and unripe and having been treated as herein shown, would if eaten or consumed, especially by children, produce serious disturbances of the digestive system.

On January 18, 1916, no claimant having appeared for the property, judgment of condemnation and forfeiture was entered, and it was ordered by the court that the product should be destroyed by the United States marshal.

C. F. Marvin, *Acting Secretary of Agriculture.*

5645. Adulteration of pork and beans. U. S. * * * v. 911 Cases * * * of Pork and Beans. Consent decree of condemnation and forfeiture. Good portion released on bond. Unfit portion ordered destroyed. (F. & D. No. 7388. I. S. No. 19091–l. S. No. C–511.)

On or about May 8, 1916, the United States attorney for the District of Kansas, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district a libel, and on or about December 28, 1916, an amended libel, praying the seizure and condemnation of 911 cases, each containing 2 dozen cans of pork and beans, remaining unsold in the original unbroken packages at Salina, Kans., alleging that the article had been shipped on or about March 22, 1916, by the Norfolk Packing Co., Norfolk, Nebr., and transported from the State of Nebraska into the State of Kansas, and charging adulteration in violation of the Food and Drugs Act. The article was labeled in part: "Summer Girl Brand Pork and Beans with Tomato Sauce * * *."

Adulteration of the article was alleged in the amended libel for the reason that it contained a large quantity of decomposed, diseased, and rotten beans and by reason thereof consisted in part of a filthy and decomposed vegetable substance.

On January 23, 1917, the said Norfolk Packing Co., claimant, having consented to a decree, judgment of condemnation and forfeiture was entered, and it was ordered by the court that upon the payment of the costs of the proceedings and the execution of a bond in the sum $1,000, in conformity with section 10 of the act, the product should be released to said claimant to be sorted under the supervision of the Bureau of Chemistry of this department, the good portion, if any, to be released to said claimant, and the unfit portion to be destroyed.

C. F. Marvin, *Acting Secretary of Agriculture.*

5646. Misbranding of "Kopp's Kidney Pills," "Kopp's," and "Kopp's Baby's Friend." U. S. * * * v. Kopp's Baby's Friend Co., a corporation. Plea of nolo contendere. Fine, $25 and costs. (F. & D. No. 7407. I. S. Nos. 14333-k, 14335-k, 14545-k, 15603-k.)

On October 18, 1916, the United States attorney for the Middle District of Pennsylvania, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against the Kopp's Baby's Friend Co., a corporation, York, Pa., alleging shipment by said company in violation of the Food and Drugs Act, as amended, on or about June 23, 1915, from the State of Pennsylvania into the State of Michigan, of quantities of articles labeled in part "Kopp's Kidney Pills," and "Kopp's," and on or about January 20, 1915, and May 29, 1915, into the State of Illinois, of quantities of articles labeled in part, "Kopp's Baby's Friend" and "Kopp's," respectively, which were misbranded.

Analyses of samples of the articles by the Bureau of Chemistry of this department showed the following results:

The Kidney Pills:

Methylene blue: Large amount.
Juniper oil: Present.
Starch: Present.

Ash (total) (per cent)	6.82
Calcium oxid (per cent)	5.12
Magnesium oxid (per cent)	0.12
Ash (pill without coating) (per cent)	3.88

Buchu: Indicated.
Nitrates: None.
Hexamethylenamine: None.
Carbonates: Present.

Preparation is a pink, coated pill containing chiefly methylene blue, juniper, and unidentified matter.

The "Baby's Friend":

Alcohol (per cent by volume)	8.82
Nonvolatile matter in vacuo at 70° C. (grams per 100 cc)	41.35
Ash: Trace.	
Morphine as morphine sulphate (grains per fluid ounce)	0.08
Sucrose by Clerget (per cent)	43.79
Reducing sugars as invert (gram per 100 cc)	0.43

Anise and caraway flavor. Preparation is a heavy sirupy mixture, containing alcohol, morphine, and aromatic substances.

The "Kopp's":

(1)

Alcohol (per cent by volume)	8.52
Nonvolatile matter at 70° C. in vacuo (per cent)	36.42
Sucrose by Clerget (per cent)	36.36
Morphine as morphine sulphate (grains per fluid ounce)	0.09
Aromatics: Present.	

The preparation is a sirup containing alcohol, morphine, and aromatics.

(2)

Specific gravity at 25° C.	1.142
Alcohol (per cent by volume)	7.84
Nonvolatile matter at 70° C. (per cent)	35.65
Sucrose by Clerget (per cent)	35.01
Morphine as morphine sulphate (grains per fluid ounce)	0.07

Aromatics: Present.

Preparation is a sirup containing alcohol, morphine, and aromatics.

It was alleged in substance in the information that the Kidney Pills were misbranded for the reason that certain statements appearing on the labels falsely and fraudulently represented them as a remedy for kidney troubles and diseases due to disordered kidneys and bladder, backache, rheumatism, congestion of the kidneys, inflammation of the bladder, urinary troubles, and all diseases arising from disorders of the kidneys and bladder, when, in truth and in fact, they were not; and for [the] further reason that certain statements included in the circular or pamphlet accompanying the pills falsely and fraudulently represented them as a remedy for kidney and bladder complaints, congestion of the kidneys, backache, rheumatism, gravel, inflammation of the bladder, and urinary troubles, and effective in the treatment and prevention of Bright's disease, lumbago, dribbling, blood in the urine, sudden stoppage of the urine, catarrh of the bladder, gall stones, excessive thirst, ashen pallor of the face, irregular heart action, swollen ankles, frequent bilious attacks, frequent desire to urinate, and female diseases, when, in truth and in fact, they were not.

It was alleged in substance in the information that the "Baby's Friend" was misbranded for the reason that certain statements appearing on the carton and bottle, or in the circulars or pamphlets accompanying the article, as the case might be, falsely and fraudulently represented it as a remedy for wind colic, griping in the bowels, diarrhea, cholera infantum, and teething troubles, when, in truth and in fact, it was not; and for the further reason that certain statements included in the circulars or pamphlets accompanying the article were false and misleading in that they indicated to purchasers that the article did not contain a poisonous or deleterious ingredient which might render it injurious to health, when, in truth and in fact, it contained a poisonous and deleterious ingredient which might render it injurious to health, to wit, 0.08 grains morphine sulphate, per fluid ounce.

Misbranding of the article labeled "Kopp's" was alleged in substance for the reason that certain statements included in the circulars or pamphlets accompanying the article falsely and fraudulently represented it as a remedy for diarrhea, dysentery, cholera infantum, teething troubles, and colic, when, in truth and in fact, it was not.

On October 18, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $25 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

5647. Misbranding of "Reuter's Syrup." U. S. * * * v. Barclay & Co., a corporation. Plea of guilty. Fine, $100. (F. & D. No. 7416. I. S. No. 2377-k.)

On July 24, 1917, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against Barclay & Co., a corporation, doing business at New York, N. Y., alleging shipment by said company, in violation of the Food and Drugs Act, as amended, on January 20, 1915, from the State of New York into the Island of Porto Rico, of a quantity of an article labeled in part, "Reuter's Syrup," which was misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Alcohol (per cent by volume)	22.1
Total solids (grams per 100 cc)	12.28
Ash (gram per 100 cc)	0.11
Reducing sugars (gram per 100 cc)	0.24
Sucrose (grams per 100 cc)	10.88
Nonsugar solids (grams per 100 cc)	1.16

Lead acetate precipitate: Very light.

The product is essentially a hydroalcoholic solution of sugar, aromatics, and a cathartic drug containing emodin.

It was alleged in substance in the information that the article was misbranded for the reason that certain statements appearing on its labels falsely and fraudulently represented it to be effective for purifying the blood and as a remedy for anemia, chlorosis, dyspepsia, scrofula, syphilis, pimples, herpes, and cutaneous affections in general; all infirmities resulting from impoverished blood, irregularities of the stomach, catarrh, indigestion, piles, rheumatism, malarial fever, gangrene, psoriasis, eruptions, carbuncles, eczema, affections of the bladder and the kidneys; all organic debility in man and woman, irregularities common to women, similar infirmities that are in many cases the cause of serious sickness; and effective for the extermination of worms; and for the further reason that certain statements appearing in the circular or pamphlet accompanying the article falsely and fraudulently represented it as a cure for syphilis and eczema and to be effective for the extermination of all classes of worms and for preventing the return thereof, when, in truth and in fact, it was not.

On September 4, 1917, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $100.

C. F. Marvin, *Acting Secretary of Agriculture.*

5648. Adulteration and misbranding of cognac brandy. U. S. * * * v. William P. Bernagozzi and Ferdinando Bernagozzi (W. P. Bernagozzi & Bro.). Pleas of guilty. Fine, $50. (F. & D. No. 7425. I. S. No. 1465-k.)

On August 10, 1916, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William P. Bernagozzi and Ferdinando Bernagozzi, trading as W. P. Bernagozzi & Bro., New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on December 21, 1914, from the State of New York into the State of Pennsylvania, of a quantity of an article labeled in part, "Fine Old Cognac Brandy," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Contents	1 pint 6.6 fluid ounces.
Proof (degrees)	88
Fusel oil (grams per 100 liters, 100-proof alcohol)	3
Esters, as acetic (grams per 100 liters, 100-proof alcohol)	15
Acidity, as acetic (grams per 100 liters, 100-proof alcohol)	2.7
Aldehydes, as acetic (gram per 100 liters, 100-proof alcohol)	0.3
Furfurol (gram per 100 liters, 100-proof alcohol)	0.06

Paraldehyde test: Positive.

Analysis indicates sample consists wholly or in large part of neutral spirits artificially colored with caramel.

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, neutral spirits, colored with caramel in imitation of brandy, had been substituted, in whole or in part, for cognac brandy, which the article purported to be; and for the further reason that it was an inferior product, to wit, an imitation cognac brandy, consisting, in whole or in part, of neutral spirits, and had been colored with, to wit, caramel, in a manner whereby its inferiority to genuine cognac brandy was concealed.

Misbranding was alleged in substance for the reason that the statements regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Aronel & Compan Fine Old Cognac Brandy" and "1870" and representation of three stars, were false and misleading in that they indicated to purchasers that the article was genuine cognac brandy produced in the Cognac district, Republic of France, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was genuine cognac brandy produced in the Cognac district, Republic of France, when, in truth and in fact, it was not, but was, to wit, a product consisting, in whole or in part, of neutral spirits colored with caramel in imitation of cognac brandy; and for the further reason that it consisted of, to wit, a product composed, in whole or in part, of neutral spirits colored with caramel, and was an imitation of, and was offered for sale under the distinctive name of, another article. Misbranding was alleged for the further reason that the article consisted of food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count.

On August 6, 1917, the defendants entered pleas of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5649. Adulteration and misbranding of cognac brandy. U. S. * * * v. William P. Bernagozzi and Ferdinando Bernagozzi (W. P. Bernagozzi & Bro.). Pleas of guilty. Fine, $50. (F. & D. No. 7428. I. S. No. 4246–k.)

On July 27, 1917, the United States attorney for the Southern District of New York, acting upon a report by the Secretary of Agriculture, filed in the District Court of the United States for said district an information against William P. Bernagozzi and Ferdinando Bernagozzi, trading as W. P. Bernagozzi & Bro., New York, N. Y., alleging shipment by said defendants, in violation of the Food and Drugs Act, as amended, on July 24, 1915, from the State of New York into the State of Massachusetts, of a quantity of an article labeled, in part, "Bernag Fréres Cognac Best Type Cognac Brandy," which was adulterated and misbranded.

Analysis of a sample of the article by the Bureau of Chemistry of this department showed the following results:

Proof (degrees) 87.4.

Acids, as acetic, 17 parts per 100,000, 100 proof alcohol.

Esters, as acetic, 15 parts per 100,000, 100 proof alcohol.

Fusel oil as amyl alcohol, 17 parts per 100,000, 100 proof alcohol.

Spirit character: No resemblance to true cognac in composition, flavor, or aroma.

	Contents	Shortage.
Bottle 1.	24.01 fluid ounces.	1.99 fluid ounces.
Bottle 2.	24.34 fluid ounces.	1.66 fluid ounces.
Bottle 3.	24.28 fluid ounces.	1.72 fluid ounces.
Bottle 4.	24.24 fluid ounces.	1.76 fluid ounces.
Bottle 5.	24.24 fluid ounces.	1.76 fluid ounces.

The results show this product to consist principally of dilute neutral spirits, flavored with a small amount of brandy.

Adulteration of the article was alleged in the information for the reason that a certain substance, to wit, dilute neutral spirits, had been substituted in whole or in part for cognac brandy, which the article purported to be.

Misbranding was alleged in substance for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, in conspicuous type, to wit, "Bernag Freres Cognac Best Type Cognac Brandy," and representations of three stars, not corrected by the additional statement appearing on the neck label of the bottle in inconspicuous type, to wit, "California products," were false and misleading in that they indicated to purchasers thereof that it was genuine cognac brandy produced in the Cognac district, Republic of France, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it was genuine cognac brandy produced in the Cognac district, Republic of France, when, in truth and in fact it was not, but was, to wit, a product consisting in whole or in part of neutral spirits; and for the further reason that it was a product consisting in whole or in part of neutral spirits and was an imitation of, and offered for sale under, the distinctive name of another article, to wit, cognac brandy; and for the further reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Net Contents Twentysix Ounces," was false and misleading in that it indicated to purchasers thereof that the packages contained twenty-six ounces of the said article, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that the packages contained twenty-six ounces of the said article, when, in truth and in fact, they

did not. Misbranding of the article was alleged for the further reason that it consisted of food in package form, and the quantity of the contents was not plainly and conspicuously marked on the outside of the package in terms of weight, measure, or numerical count.

On August 6, 1917, the defendants entered pleas of guilty to the information, and the court imposed a fine of $50.

C. F. Marvin, *Acting Secretary of Agriculture.*

5650. Adulteration and misbranding of vinegar. U. S. * * * v. Haarmann Vinegar & Pickle Co., a corporation. Plea of guilty. Fine, $40 and costs. (F. & D. No. 7439. I. S. Nos. 10303–l, 14177–k, 10305–l, 14073–k.)

At the September, 1916, term of the District Court of the United States for the District of Nebraska, the United States attorney for said district, acting upon a report by the Secretary of Agriculture, filed in said district court an information against the Haarmann Vinegar and Pickle Co., a corporation, Omaha, Nebr., alleging shipment by said company, in violation of the Food and Drugs Act, on or about July 13, 1915, July 9, 1915, June 15, 1915, and June 4, 1915, from the State of Nebraska into the State of Iowa, of quantities of vinegar which was adulterated and misbranded. The article in the shipment on July 13, 1915, was labeled, in part, "First Prize Apple Cider Vinegar—55 Grn." The article in the shipment on July 9, 1915, was invoiced in part as "60 Gr. Cider Vinegar" and "60" was stenciled on the barrels. The article in the shipment on June 15, 1915, was labeled, in part, "80 Sugar Cane Vinegar." The article in the shipment on June 4, 1915, was invoiced in part as "60 gr. Cider Vinegar," and "60" was stenciled on the barrels.

Analyses of samples of the article by the Bureau of Chemistry of this department showed the following results:

	Shipment of—			
	July 13, 1915.	June 15, 1915.	June 4, 1915.	July 9, 1915.
Alcohol (per cent by volume)	0.10	0.60	0.20	0.05
Glycerol (gram per 100 cc)	0.20	0.11	0.19	0.17
Solids (grams per 100 cc)	2.70	1.64	2.56	2.47
Nonsugar solids (grams per 100 cc)	1.79	1.22	1.73	1.62
Reducing sugar as invert before inversion (grams per 100 cc)	1.11	0.53	1.02	1.00
Reducing sugar as invert after evaporation (gram per 100 cc)	0.91	0.42	0.83	0.85
Ash (gram per 100 cc)	0.38	0.36	0.40	0.37
Alkalinity soluble ash (cc N/10 acid per 100 cc)	28.4	5.6	25.0	24.6
Total phosphoric acid (P_2O_5) (milligrams per 100 cc)	16.7	5.1	15.8	15.5
Acidity as acetic (grams per 100 cc)	5.88	7.80	6.06	6.02
Color (degrees, brewer's scale, 0.5 inch)	23.0	15.0	16.0	16.0
Color removed by fuller's earth (per cent)	63	60	50	44
Volatile reducing bodies (gram per 100 cc)	0.20	0.11	0.19	0.15

Distilled vinegar or dilute acetic acid added in each case.

Adulteration of the article in each shipment was alleged in the information for the reason that a certain substance, to wit, distilled vinegar or dilute acetic acid, had been mixed and packed therewith so as to reduce, lower, and injuriously affect its quality and strength, and had been substituted in whole or in part for apple cider vinegar (or sugar-cane vinegar as the case might be) reduced to 55-grain strength (or 60-grain, or 80-grain strength as the case might be).

Misbranding of the article in the shipment on July 13, 1915, was alleged for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "Apple Cider Vinegar, 55 grn," was false and misleading in that it indicated to purchasers thereof that the article consisted of apple cider vinegar reduced to 55-grain strength, and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it consisted of apple cider vinegar reduced to 55-grain strength, when, in truth and in fact, it did not but consisted of, to wit, a mixture of distilled vinegar or dilute acetic acid, and apple cider vinegar; and for the further reason that it was, to wit, a mixture of distilled vinegar or dilute acetic acid and apple cider vinegar and was an imitation of, and was offered for sale under the distinctive name of another article, to wit, apple cider vinegar.

Misbranding of the article in the shipments on July 9, 1915, and June 4, 1915, was alleged for the reason that it consisted of, to wit, a mixture of distilled vinegar, or dilute acetic acid, and apple cider vinegar, and was an imitation of, and was offered for sale under the distinctive name of another article, to wit, apple cider vinegar or cider vinegar as the case might be.

Misbranding of the article in the shipment on July 15, 1915, was alleged for the reason that the statement regarding the article and the ingredients and substances contained therein, appearing on the label, to wit, "80 sugar cane vinegar," was false and misleading in that it indicated to purchasers that the article consisted of sugar-cane vinegar reduced to 80 grains strength; and for the further reason that it was labeled as aforesaid so as to deceive and mislead purchasers into the belief that it consisted of sugar-cane vinegar reduced to 80-grain strength, when, in truth and in fact, it did not, but consisted of, to wit, a mixture of distilled vinegar, or dilute acetic acid, and sugar-cane vinegar; and for the further reason that it was a mixture of distilled vinegar or dilute acetic acid and sugar-cane vinegar and was an imitation of, and was offered for sale under the distinctive name of another article, to wit, sugar-cane vinegar.

On November 11, 1916, the defendant company entered a plea of guilty to the information, and the court imposed a fine of $40 and costs.

C. F. Marvin, *Acting Secretary of Agriculture.*

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